

## Fallen Woman (Re)framed: Judge Jean Hortense Norris, New York City – 1912-1955

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### INTRODUCTION

In 1932, William and John Northrop, brothers and members of the New York State Bar, published their book, *THE INSOLENT OFFICE: THE STORY OF THE SEABURY INVESTIGATIONS*. It purported to provide the “factual narrative” underlying the wide-ranging New York City investigation that occurred under the auspices of their brethren-in-law, Samuel Seabury.<sup>1</sup> Seabury, a luminary in New York legal circles, was appointed as one of the nation’s first “special counsel” by state officials to uncover, among other things, whether kick-backs, bribes and other corrupt actions were taking place in the City’s Women’s Court—a special docket in the Magistrates’ Court system that handled prostitution-related cases for female defendants.<sup>2</sup>

According to the Northrop brothers, Seabury was a man of impeccable integrity, fairness, and legal ability who unearthed evil within the halls of the Magistrates’ Court system.<sup>3</sup> And for them, no single person embodied that wickedness more than Jean Hortense Norris, who had been appointed in 1919 as New York State’s first woman judge to serve in the Magistrates’ system to focus specifically on the Women’s Court and Domestic Relations dockets. As a result of Seabury’s

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1. WILLIAM B. NORTHRUP & JOHN B. NORTHRUP, *THE INSOLENT OFFICE: THE STORY OF THE SEABURY INVESTIGATIONS* vii (1932).

2. *Id.* at 12–16.

3. *Id.*

investigation and a subsequent trial, Norris was removed from the bench, leading the Northrops to declare:

Prior to her appointment Jean Norris had been [a district] co-leader with [Tammany Hall Democrat] George W. Olvany . . . This and the fact that she was a woman were her qualifications for judgeship. The story of her fall and subsequent dismissal from office is a sad one. It was brought about solely by her own shortcomings. Here was an opportunity unparalleled for a woman to render an outstanding public service, by treating those arraigned before her with firmness, yet with understanding, humane sympathy, and not with the “fist of steel.” Unfortunately, she failed.<sup>4</sup>

The sentiments of the Northrop brothers captured what many expressed at the time of Norris’s ouster—that she was unqualified, unkind, and corrupt. Such wide-spread disdain ultimately resulted in Norris falling into obscurity.

Today almost no one knows the story of Jean Hortense Norris. Recent legal histories about the New York City’s Women’s and Domestic Relations Courts entirely overlook her work and experience.<sup>5</sup> What has been published by a rare few are short vignettes in longer accounts of the period, highlight the end of Norris’s judgeship, and too frequently echo the Northrop brothers’ claims without legal analysis or critique.<sup>6</sup>

One such sketch was provided by Cheryl Hicks in her recent book, *TALK WITH YOU LIKE A WOMAN: AFRICAN AMERICAN WOMEN, JUSTICE, AND REFORM IN NEW YORK: 1890-1935*.<sup>7</sup> Hicks adds significantly to the still largely unwritten history of African American women prosecuted in New York courts at the turn of the last century. Her research revisits New York City’s Women’s Court to, in part, tell the

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4. *Id.* at 81.

5. See, e.g., Amy J. Cohen, *Trauma and the Welfare State: A Genealogy of Prostitution Courts in New York City*, 95 TEX. L. REV. 915 (2017); Elizabeth D. Katz, *Family Law as Criminal Law: The Forgotten Criminal Origins of Modern Family Laws and Courts*, \_\_\_\_ CHICAGO L. REV. \_\_\_\_ (forthcoming 2019).

6. See, e.g., Gerald Stern, *Is Judicial Discipline in New York State a Threat to Judicial Independence?*, 7 PACE L. REV. 291, 324–25 (1987); Gabriel J. Chin, *Volume Introduction in NEW YORK CITY CORRUPTION INVESTIGATION COMMISSIONS, 1894–1994, VOLUME III: FINAL REPORT OF SAMUEL SEABURY, REFEREE, IN THE MATTER OF THE INVESTIGATION OF THE MAGISTRATES’ COURTS IN THE FIRST JUDICIAL DEPARTMENT AND THE MAGISTRATES THEREOF, AND OF ATTORNEYS-AT-LAW PRACTICING IN SAID COURTS*, at vii–xi (1997); see also BURTON PERETTI, *NIGHTCLUB CITY: POLITICS AND AMUSEMENT IN MANHATTAN* 128 (2007); JULIA BLACKBURN, *WITH BILLIE: A NEW LOOK AT THE UNFORGETTABLE LADY* 61–62 (2012).

7. CHERYL D. HICKS, *TALK WITH YOU LIKE A WOMAN: AFRICAN AMERICAN WOMEN, JUSTICE, AND REFORM IN NEW YORK, 1890–1935*, at 173–74 (2010).

forgotten stories of Black women who passed through its doors and, frequently, into New York's jails—some sentenced by Judge Norris, a white woman.

In doing so, Hicks demonstrates how the Women's Court and its partner agencies often operated on false assumptions and perpetuated misguided social and moral beliefs of the period. It also reminds us that history must be repeatedly revisited to surface untold accounts, add stories that may have been forgotten, and include complexities previously elided. In this way, Hicks's rich, layered, and nuanced analysis stands in stark contrast to the mug shot of the young woman of color on the cover of her book—who is limited to a black and white image.

Yet, while insightful and informative in these respects, even Hicks's presentation of Jean Norris tends to minimize. Norris's legal contributions, professional life, and personhood become one-dimensional.

In part inspired by Hicks's own critical historical efforts, this Article seeks to surface and understand more than what is already known about Jean Hortense Norris as a lawyer, jurist, and feminist legal realist—as well as a woman for whom sex very much became part of her professional persona and work.<sup>8</sup> In doing so, it contests a range of claims made by her contemporaries and modern commentators alike, by showing that she was deeply involved in women's rights efforts, demonstrated a great deal of compassion for the female defendants who came before her, and uniquely engaged with communities of color.

As part of this retelling, Norris's official misconduct prosecution is also more carefully examined, employing a due process lens. Run by Samuel Seabury, one of the nation's first appointed "special counsel," the investigation and proceedings against Norris were both historic and ad hoc. This Article analyzes the lack of legal protections provided to Norris and troubling nature of her removal given the evidence presented and standards applied. It thus encourages fundamental reconsideration of Samuel Seabury, the man, and his Commission, which to date has been lauded in historical accounts as a model of integrity.

This is not to say Norris deserves absolute absolution—she was a

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8. As such, this account expands on my larger body of work on Feminist Legal Realism, which contrasts the heady and removed writings of male realists in academia and appellate courts at the early part of the last century, with the work of women contemporaries who were in communities and trial courts actually deploying their own form of Legal Realism, which was more impromptu, hands-on, and direct in its approaches. See Mae C. Quinn, *Feminist Legal Realism*, 35 HARV. J.L. & GENDER 1, 34–35 (2012) [hereinafter *Feminist Legal Realism*].

woman with many flaws, known and unknown. But like many of the women who appeared in New York City's Magistrate Court charged with acts of alleged sexual misconduct, perhaps Judge Jean Hortense Norris should be understood as an imperfect and complex woman felled by her times and surrounding circumstances—rather than a woman whose own shortcomings and wrongful actions justified her fall from grace.

Finally, this Article seeks to provide further context for Jean Norris's alleged misconduct charges to suggest that as a woman who dared to blur gender boundaries, embrace her professional power, and offer a unique vision of the “fairer sex,”<sup>9</sup> she was held to a different standard than her male peers and made to pay the price with her career. In these ways, this Article provides a more complete picture of Jean Norris beyond a shamed and disrobed judge. And it begins to move Judge Norris out of legal history's margins so that she may be remembered as more than mere mugshot in the American imagination.<sup>10</sup>

#### I. WOMAN LAWYER: EARLY FEMINIST ATTORNEY ACTIVE ON AND WITH MANY FRONTS

##### A. *Launching the Women Lawyers' Association and Its Journal*

On March 18, 1911, the Association of Women Law Students of New York University Law School hosted a campus rally.<sup>11</sup> Several prominent men addressed the group, including the law school's dean, Clarence D. Ashley.<sup>12</sup> But the most interesting speaker by far was Bertha Rembaugh.<sup>13</sup> Rembaugh, one of New York City's first practicing women lawyers, had begun to make a name for herself in courts around town after graduating a few years before.<sup>14</sup> And quite controversially, she told the crowd it was too soon to know whether women would

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9. See, e.g., *Women Lawyers Defend Sex in Norris Ouster*, SHAMOKIN NEWS-DISPATCH, July 9, 1931, at 8 (critiquing Norris after her ouster for failing to appropriately embody the “fairer sex”).

10. In a prologue essay to this project, I surface more about Norris's personal life, including her Brooklyn childhood, family of origin, marriage, and widowhood. See Mae C. Quinn, *Judge Jean Hortense Norris: Fallen Woman Further (Re)Framed*, 68 U. KAN. L. REV. \_\_\_\_ (forthcoming 2019) [hereinafter Quinn, *Fallen Woman Further (Re)Framed*]. In her own important work in progress, political historian Elisabeth Israels Perry seeks to address women's role in party politics in New York City during the Progressive Era, including Norris, in part relying on this work and research.

11. *Miss Rembaugh Strikes from the Shoulder*, 1 WOMEN LAW. J. 1, 1 (1911) [hereinafter *Rembaugh Strikes*]; see also *Bertha Rembaugh, Legal Leader, Dies*, N.Y. TIMES, Feb. 1, 1950, at 30.

12. *Rembaugh Strikes*, *supra* note 11.

13. *Id.* (“Dr. Clarence D. Ashley, Dean of the Faculty of Law [and other men], made interesting addresses, but the speaker of the occasion was Miss Bertha Rembaugh”).

14. *Id.*

succeed in law.<sup>15</sup>

Women were still new to the profession and few maintained offices or active caseloads. One such woman was Mary L. Lilly, who walked New York University Law School's graduation stage sixteen years earlier.<sup>16</sup> Lilly initially set up shop in Manhattan.<sup>17</sup> But eventually she joined Sarah Stevenson, a 1904 Brooklyn Law School graduate and the first woman to open a law firm in that borough, at 16 Court Street in Kings County.<sup>18</sup> Amy Wren, a 1908 Brooklyn Law graduate, also practiced from the Court Street office building for a while.<sup>19</sup> But she ultimately hung out a shingle on the opposite Brooklyn corner, at 215 Montague Street.<sup>20</sup>

The results were not all in on how these women—and others like them—would fare. More than this, Rembaugh explained, to be on par with men, women needed to develop the same savvy and confidence displayed by their male counterparts.<sup>21</sup> But they also had to look well-beyond the book-based learning they were taught in law school.<sup>22</sup> They would need to figure out how systems worked in the real world to infiltrate them and put theories into action to benefit themselves and their sex—as a kind of feminist legal realism.<sup>23</sup> But she also proffered a path that was likely to be tiring and possibly even treacherous.

Even “if you do not know what you are doing” she urged, you must “act as if you [do].”<sup>24</sup> She further advised the women to develop “the ability to land upon [their] feet” after setbacks.<sup>25</sup> And perhaps above all else, they needed to be “willing to pay the price of success”—something

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15. *Id.*

16. *Bachelors of the Laws*, N.Y. TIMES, June 11, 1895, at 5 (Lilly was one of an “unusually large number of women”—ten in all—to graduate from New York University Law in 1895).

17. *See Women Lawyers' Club Membership List*, 1 WOMEN LAW. J. 1, 8 (1911).

18. *See Women Lawyers' Association Membership List*, 4 WOMEN LAW. J. 79, 79 (1914) (providing 16 Court Street, Brooklyn, New York as the address for both Lilly and Stephenson); *see also Sarah Stevenson, Lawyer, Dies at 66—First of Her Sex to Open her Own Office in Brooklyn*, N.Y. TIMES, March 29, 1945, at 20.

19. *Ms. Wren Takes Oath as U.S. Commissioner*, N.Y. TIMES, May 12, 1928, at 2 (noting Wren's 1908 Brooklyn Law School graduation date).

20. *See Women Lawyers' Club Membership List*, 2 WOMEN LAW. J. 42, 42 (1912) (listing 215 Montague Street in Brooklyn as Wren's address, rather than 16 Court Street, where she started); *see also Miss Amy Wren, 85, U.S. Commissioner*, N.Y. TIMES, March 24, 1968, at 27 (reporting Wren maintained a 215 Montague Street office until her death).

21. *Rembaugh Strikes*, *supra* note 11, at 1.

22. *Id.*

23. *See Quinn, Feminist Legal Realism*, *supra* note 8, at 35.

24. *Rembaugh Strikes*, *supra* note 11, at 1.

25. *Id.*

that in Rembaugh's view, women had not yet been willing to do.<sup>26</sup>

She did not fully explain what that price might be. But as she gave her rousing speech, Rembaugh was likely watched and admired by two New York University law students in particular—Anna Moscovitz in her early 20's,<sup>27</sup> and a student in her mid-30's, Jean Hortense Norris.<sup>28</sup> Both women had already graduated with their bachelors of law credentials but remained at New York University to earn advanced law degrees.<sup>29</sup> In short order, both Norris and Moscovitz would join forces with Rembaugh—as well as Lilly, Stephenson, and Wren—to advance rights for a wide range of women, from those seeking to enter the legal profession to those trying to exit the criminal justice system.

In 1899, neither the American Bar Association nor the New York City Bar Association permitted women to join their ranks.<sup>30</sup> Thus women attorneys and law students launched their own organization to support each other and advocate the well-being of women more generally—the Women Lawyers' Club.<sup>31</sup>

The group referred to itself as a Club, in part due to its intimate size.<sup>32</sup> But the moniker also signaled the same exclusivity of New York City Women's Clubs more generally—groups started by white, middle-class women who largely excluded women of color from their membership rolls.<sup>33</sup> As the Women Lawyers' Club attracted more members, locally and across the country, it changed its name to the Women Lawyers' Association.<sup>34</sup> But for years to come, even if not

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26. *Id.* Kate Kane is one example, perhaps unknown to Rembaugh, who paid the price during this era for daring to embrace her role as counsel. See Joel E. Black, *Citizen Kane: The Everyday Ordeals and Self-Fashioned Citizenship of Wisconsin's "Lady Lawyer"*, 33 LAW & HIST. REV. 201, 201, 215–17 (2015).

27. Mae C. Quinn, *Revisiting Anna Moscovitz Kross's Critique of New York City's Women's Court: The Problem of Solving the "Problem" of Prostitution with Specialized Courts*, 33 FORDHAM U. L.J. 665, 669 n.11 (2006) [hereinafter *Revisiting Anna Moscovitz Kross*] (Anna Moscovitz was born in Russia in 1891 and after her marriage became Anna Moscovitz Kross).

28. WOMAN'S WHO'S WHO OF AMERICA: A BIOGRAPHICAL DICTIONARY OF CONTEMPORARY WOMEN OF THE UNITED STATES AND CANADA 1914–1915, at 601 (1914) (noting that Norris was born January 25, 1877).

29. *Revisiting Anna Moscovitz Kross*, *supra* note 27, at 678 n.60, 681 n.86 (Kross received her LL.B. in 1910 and her LL.M. in 1911; Norris received her LL.B. in 1909 and her LL.M. in 1912).

30. Jean H. Norris, *The Women Lawyers' Association*, 4 WOMEN LAW. J. 28, 28 (1915).

31. *Id.*

32. *Id.*

33. See Dorothy Roberts, *Black Club Women and Child Welfare: Lessons for Modern Reform*, 32 FLA. ST. U. L. REV. 957, 958 (2005) (excluded from white women's clubs, Black women started their own club movement).

34. Norris, *supra* note 30, at 28.

expressly, it remained a white woman's organization.<sup>35</sup>

By May 1911, the group, which included Norris, launched a quarterly periodical called the *Women Lawyers' Journal*.<sup>36</sup> It was intended to reach potential members and share news relevant to women in law.<sup>37</sup> The *Journal* published articles about women lawyers, law students, and topics of interest to them.<sup>38</sup> Thus, Rembaugh's March 1911 presentation to the New York University women law students was covered on page one of the first issue.<sup>39</sup>

During its first year the *Journal* also included articles that described the state of women's suffrage, tracked legislation impacting the rights of married and unmarried women, and provided practical suggestions for women trial attorneys.<sup>40</sup> Notably absent, however, was any significant mention of issues faced by women of color in America, much less Black women lawyers.<sup>41</sup> This troubling void, reflecting Black women's exclusion from both white women's and Black men's groups, persisted for decades.<sup>42</sup>

Mrs. Jean H. Norris, as she liked to be called as a young widow, made her debut in the *Women Lawyers' Journal* in August 1912 when she was congratulated for receiving her LL.M. and highlighted for supporting women's suffrage efforts.<sup>43</sup> She also contributed her first

35. The Women Lawyers' Association has now become the National Association of Women Lawyers. Photographs on its webpage depict a membership that appears to remain overwhelmingly white. See, e.g., *Meet the NAWL 2018–2019 Board of Directors*, NAT. ASS'N OF WOMEN LAW., <https://www.nawl.org/p/cm/ld/fid=624> [https://perma.cc/QGW3-NJM5] (last visited Jan. 18, 2019).

36. See generally *supra* note 17, at 8.

37. *Id.*

38. See generally *id.* (first eight-page issue containing a range of articles); see also Virginia G. Drachman, *The New Woman Lawyer and the Challenge of Sexual Equality in Early Twentieth-Century America*, 28 IND. L. REV. 227, 246 (1995).

39. See *Rembaugh Strikes*, *supra* note 11, at 1.

40. See, e.g., Olive Stott Gabriel, *Progress of Equal Suffrage*, 1 WOMEN LAW. J. 7, 7 (1911); Harriette M. Johnston-Wood, *Pending Legislation of Peculiar Interest to Women*, 1 WOMEN LAW. J. 7, 7 (1911).

41. See Taja-Nia Y. Henderson, "I Shall Talk to My Own People": *The Intersectional Life and Times of Lutie A. Lytle*, 102 IOWA L. REV. 1983, 1984 (2017) (providing important historical account of the work of the nation's first Black woman law professor, Lutie Lytle, who is not listed among the members of the Women Lawyer's Club); Carla D. Pratt, *Sisters in Law: Black Women's Struggle for Advancement*, 2012 MICH. ST. L. REV. 1777, 1780 (recounting history of Black women in the law and noting their "different position and experience in the legal profession when compared not only to their white female peers, but also when compared to other women of color.").

42. See generally WOMEN LAW. J. issues 1911–1916; 85 WOMEN LAW. J. (1999) (100th Anniversary Edition); see also Lucretia Murphy, *Black Women: Organizing to Lift . . . to Climb . . . to Rise*, 4 TEX. J. WOMEN & L. 267, 269 (1995) (describing how at the turn of the last century Black women were left out of both the white club women's movement, and organizations for Black men).

43. See *Membership List of the Women Lawyers' Club*, 1 WOMEN LAW. J. 34, 34 (1912) (listing Norris as a member).

article to that issue, entitled *Practice and Procedure under the Transfer Tax Law*.<sup>44</sup> Beginning with a twisting, turning, fifty-seven-word first sentence, the piece went on to offer detailed, if not tedious, step-by-step instructions for handling probate tax issues in New York.<sup>45</sup> This substantial submission was perhaps a well-planned effort by Norris to justify her later Journal advertisement declaring herself an “Expert” in income and transfer tax issues just two years after she graduated from New York University Law School.<sup>46</sup> Or it may have been an awkward attempt to gain the respect of her peers. Further, a young widow, the essay may have been based in part on Norris’s own probate experiences following her husband’s death.<sup>47</sup> Possibly it reflected all of these things as Norris attempted to figure out who she was and negotiate the world in her new role as a woman lawyer.

Norris’s article appeared right next to a shorter and more passionately-written piece by Bertha Rembaugh, entitled *Problems of the New York Night Court for Women*.<sup>48</sup> Today, more than eighty years after Norris was removed from the Women’s Court bench for alleged misconduct, that happenstance placement may be seen as prescient.

Rembaugh’s article served as a call to action for fellow Association members. She reported women were being arrested on New York City streets for arguably innocent behavior.<sup>49</sup> This might include just daring to blur gendered expectations by flirting with men, staying out late, or going dancing in places where “good girls” and the “fair sex” should not be seen.<sup>50</sup> They were then charged with prostitution-related offenses and forced to defend themselves in the Magistrate’s Women’s Night Court at Jefferson Market in Greenwich Village without legal representation.<sup>51</sup>

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44. Jean H. Norris, *Practice and Procedure under the Transfer Tax Law*, 2 WOMEN LAW. J. 45, 45 (1912).

45. *Id.* at 45–46.

46. *Directory of Lawyers*, 3 WOMEN LAW. J. 16, 16 (1913).

47. Thyra Espenscheid, *She Wanted to Be a Circus Rider, But Became a Judge*, BROOK. DAILY EAGLE, Sept. 7, 1924, at 3 (“Magistrate Jean Norris a Widow at 22 Took Up the Study of Law and Won a Place on the Bench—How She Dispenses Justice”). In a follow-up historical essay in progress, I explore further details of Norris’s early life, including her family of origin, modest Brooklyn beginnings, and marriage. See Quinn, *Fallen Woman Further (Re)Framed*, *supra* note 10.

48. Bertha Rembaugh, *Problems of the New York Night Court for Women*, 2 WOMEN LAW. J. 45 (1912) [hereinafter *Problems of the New York Night Court*].

49. *Id.*

50. See generally Mae C. Quinn, *From Turkey Trot to Twitter: Policing Puberty, Purity and Sex Positivity*, 38 N.Y.U. REV. L. & SOC. CHANGE 51, 68–75, n.223 (2014) [hereinafter *From Turkey Trot to Twitter*] (describing how overly paternalistic efforts to protect white girls from the “white slave trade” and other “evils” frequently resulted in policing and prosecution of ordinary adolescent behaviors).

51. *Problems of the New York Night Court*, *supra* note 48, at 45; see also Anna Moscovitz



Most poverty law services at the time were provided by the Legal Aid Society, which formed in the late 1800s to serve German immigrants in civil matters.<sup>52</sup> In May 1910, the Society expanded into the area of indigent criminal defense representation, too.<sup>53</sup> It hired one lawyer—Edwin T. Gibson—to head up the new practice area.<sup>54</sup> In the first year he handled at least 205 cases.<sup>55</sup> But with limited resources Gibson was able to serve only a limited number of clients in the low-level Magistrates' system, which was similar to many of today's low-level police and municipal courts.<sup>56</sup> These court parts were considered only quasi-criminal in nature and not true courts of record.<sup>57</sup> Gibson started his Magistrates' Court representation at the Essex Market Police Court and then moved to the courthouse at 239 Broadway.<sup>58</sup> Thus in 1912 the Jefferson Market Night Court did not have an assigned Legal Aid Society attorney to serve indigent women defendants accused of prostitution-related offenses.<sup>59</sup>

Rembaugh thus called upon the Association's women lawyers to

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Kross & Harold M. Grossman, *Magistrates' Courts of the City of New York: Suggested Improvements*, 7 BROOK. L. REV. 411, 444–47 (1937) (recounting advent of the Women's Night Court in 1910 at the old Jefferson Market at 6th Avenue and 10th Avenue).

52. J.P. SCHMITT, HISTORY OF THE LEGAL AID SOCIETY OF NEW YORK, 1872–1912, at 40 (1912); see also generally FELICE BATLAN, WOMEN AND JUSTICE FOR THE POOR: A HISTORY OF LEGAL AID, 1863–1945 (2015); Geoffrey Heernan, *Illegal Aid: Legal Assistance to Immigrants in the United States*, 33 CARD. L. REV. 619 (2011).

53. SCHMITT, *supra* note 52, at 40.

54. *Id.*; see also *Edwin Gibson Dies in Georgia*, ITHACA J., Feb. 24, 1959, at 2 (describing Gibson's Legal Aid Society efforts and later work with General Foods and business interests).

55. SCHMITT, *supra* note 52, at 40.

56. See *id.*; Mae C. Quinn & Eirick Cheverud, *Civil Arrest? (Another) St. Louis Case Study in Unconstitutionality*, 52 WASH. U. J.L. & POL'Y 95, 98–99 (2016) (describing the history of low-level police courts in Missouri and their characterization as “quasi-criminal” in nature).

57. See *In re Deuel*, 116 A.D. 512, 515 (N.Y. App. Div. 1906) (interpreting New York's Code of Criminal Procedure as exempting the City's inferior courts from being courts of record); *Our City Magistrates*, NEW YORK AGE, Oct. 31, 1925, at 4 (“While the Magistrates' Court is not a court of record, it comes very close to the daily life of the people of New York, where their troubles are investigated or their offences expiated.”); *Woman Jurist Girdling the Globe*, HONOLULU STAR BULL., May 7, 1923, at 4 (quoting Judge Norris, “We have two courts in which I was at first especially interested . . . One deals with women's cases and the other cases involving domestic relations. At first my work lay altogether with these. Later I felt that I wished that I had more extensive experience . . . so my most recent activities have involved three courts—the women's, domestic relations, and criminal.”); see also Katz, *supra* note 5.

58. SCHMITT, *supra* note 52, at 41.

59. See Rheta Childe Dorr, *The Prodigal Daughter*, 24 HAMPTON'S MAG., 526, 526–30 (1910) (describing how the court's female probation officer, Maude Miner, assisted girls in the Jefferson Market Court who she believed worthy of a second chance without mention of legal representation); Clark Bell, *The Probation System*, 28 MEDICO-LEGAL J. 12, 12 (1910) (reporting Probation Officer Miner established “Waverly House, as a temporary home for Girls and Women, held at the Night Court while their cases are under investigation”).

volunteer in the Night Court as defenders.<sup>60</sup> She also urged development of more probationary, rehabilitative, and diversion programs to help the women develop skills and avoid a record.<sup>61</sup>

Notably, in these plans Rembaugh made no mention of the race of the Women's Court defendants who would be assisted. This could be read as Rembaugh recognizing the need to provide representation and support to all women without discrimination. Or, given the unacceptably entrenched assumptions of the day, it is more likely that Black women—tragically invisible during most of the Women Lawyers' Club's conversations—were to be excluded from the project's reach.

Regardless of who was the intended beneficiary of Rembaugh's Women's Court representation proposals, it would seem Norris implicitly criticized the effort in her writing. In a law review article, Norris claimed trial work generally, and criminal litigation particularly, were natural domains of men, which women attorneys should avoid. Instead she suggested women lawyers should limit their work to advocacy outside of courtrooms to address economic and other injustices impacting the welfare of women and children.<sup>62</sup> Her statements seemed mostly intended to placate men who felt threatened by women like her entering the field.

### *B. Constructing a New Feminist Legal Reality through Ideas and Action*

#### 1. Lobbying Versus Litigating on Behalf of Women and Children

Consistent with such views, Norris became Chair of the Women Lawyers' Association's Legislation Committee. Putting her ideas into action, she lobbied for laws to "better the condition of women and children in the home and in industry throughout the State of New York."<sup>63</sup> Norris also wrote a regular Women Lawyers' Journal column reporting on legislative developments locally and around the country.<sup>64</sup>

In 1913, the New York Times reported on a legislative campaign

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60. *Problems of the New York Night Court*, *supra* note 48, at 45.

61. *Id.*

62. Jean H. Norris, *Increasing Opportunities for Women Lawyers*, 12 OHIO L. REP. 255, 255–56 (1914) (writing men are "better equipped" than women to handle the "vast majority of our criminal cases . . . and general trial work," whereas women were best able to take on "campaigns for and against legislation which directly affects the welfare of women and children, both in their legal status and economic rights").

63. Jean H. Norris, *Legislative Bureau*, 2 WOMEN LAW. J. 63, 63 (1913).

64. *See, e.g.*, Jean Norris, *United States Supreme Court on the Question of Working Hours for Women*, 3 WOMEN LAW. J. 42 (1914).

Norris forcefully led in Albany—fighting to preserve the legal features of the Children’s Court that handled cases of accused delinquent youth, rather than allowing its conversion to an administrative body.<sup>65</sup> Such an initiative was somewhat in conflict with the country’s ongoing juvenile court movement, which sought to create less formal processes for the cases of accused juveniles.<sup>66</sup> It was more consistent with civil rights era efforts, starting in the 1960s, to ensure young people received due process protections in our juvenile justice system.<sup>67</sup>

Yet her publicly stated objections focused on two things in particular—increased costs of an administrative body and the supposed greater expertise of women judges as compared to male bureaucrats to oversee the cases of youth. That is, she did not expressly lift up the need for legal protections for accused children.<sup>68</sup> Still her more muted arguments, which perhaps strategically accounted for her audience, helped to save New York’s Children’s Court structure—as well as due-process-based proceedings.<sup>69</sup> But, her call for women-only judges in the Children’s Court—again rooted in essentialist sentiments about the natural qualities and spheres of men and women—was rejected.<sup>70</sup>

Beyond her regular legislative column, Norris continued to author Journal articles to educate women about their rights under the law, such as health insurance and employment benefits.<sup>71</sup> These submissions, like her first article, often read as if Norris was trying to pass as a learned scholar, tackling relatively arcane topics and details like the history of British divorce laws.<sup>72</sup> And, again, this tended to place Norris in her own category—trying to move among different worlds.

In contrast, Norris’s colleagues Lilly and Moscovitz maintained a more immediate tone as they continued to focus on the gritty issues presented by the Women’s Night Court. For instance, between 1912 and 1914 Lilly wrote several powerful Women Lawyers’ Journal pieces calling for both the appointment of a woman judge and more women

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65. *Oppose the Children’s Bureau*, N.Y. TIMES, Mar. 24, 1913, at 3.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*; see also Jean H. Norris, *Two Women Named for Juvenile Court Judges by Judge in St. Louis*, 3 WOMEN LAW. J. 50, 50 (1914); *Woman Lawyer Writes on the Trial of Christ*, BROOK. DAILY EAGLE, Mar. 10, 1914, at 4.

71. See, e.g., Jean H. Norris, *Health and Employment Insurance*, 2 WOMEN LAW. J. 69 (1913) (second part of two-part essay).

72. See, e.g., Jean H. Norris, *English Divorce Law*, 3 WOMEN LAW. J. 14 (1913) (offering historical development of then existing law).

probation officers for accused sex workers.<sup>73</sup> Moscowitz urged women attorneys to embrace criminal practice generally, describing how it would improve their professional standing while delivering a much-needed service.<sup>74</sup>

## 2. Learning to Master Messaging and Harnessing the Power of the Press

Perhaps due to her seniority, somewhat scholarly deportment, and strong ambitions, Norris quickly landed other leadership roles within the Women Lawyers' Association and Journal. She went from serving as the Legislative Bureau Chair in February 1913,<sup>75</sup> to Journal Editorial Board Member in May,<sup>76</sup> to being elected first Vice President for the association in December.<sup>77</sup> She juggled all three jobs through June 1914, when she was elected President of the Association,<sup>78</sup> which by that time drew members in New York and across the globe.<sup>79</sup>

During this period, the Journal offered a great number of notes of congratulations for Norris—perhaps more than for any other member. Most were without attribution and reported on her contributions to various causes. For instance, the Journal noted that “Mrs. Jean H. Norris, who is retained as special counsel in delinquent tax proceedings and district attorney’s work in New York City, has been complimented upon the good points made in her brief in an important case now in her hands.”<sup>80</sup> One might wonder if Norris herself penned most of these flattering acknowledgements.<sup>81</sup> Such a show of confidence also may

73. Mary M. Lilly, *A Day in the Children's Court in Bow Street, London*, 2 WOMEN LAW. J. 53, 53 (1912) (calling for a woman judge in courts serving girls—like the Women’s Night Court which is “crowded nightly with men who come and sit through trial after trial . . . just as they go to a moving picture show”); see also Mary M. Lilly, *Resolutions Endorsed*, 3 WOMEN LAW. J. 60 (1914); Mary M. Lilly, *Women Probation Officers*, 4 WOMEN LAW. J. 32 (1915).

74. Anna Moscowitz, *The Opportunity of the Woman Lawyer in the Criminal Court*, 4 WOMEN LAW. J. 86, 86 (1914).

75. *Officers*, 4 WOMEN LAW. J. 57, 58 (1913).

76. *Editor*, 5 WOMEN LAW. J. 65, 67 (1913).

77. *Editor*, 3 WOMEN LAW. J. 17, 19 (1913).

78. *Officers 1914–1915*, 4 WOMEN LAW. J. 79, 79–80 (1914).

79. The October 1914 Journal issue lists Clara Foltz of California, Marion Weston Cottle of New Hampshire, and Jean Cairns of Toronto, Canada as among its members. *Id.* at 79.

80. *Women in Public Life*, 3 WOMEN LAW. J. 31, 31 (1914).

81. In one article written by Marion Weston Cottle, Norris was congratulated for being “elected a member of the International Jury of Awards—Department of Social Economy, at the Panama-Pacific [International] Exposition.” Marion Weston Cottle, *Women in the Legal Profession*, 4 WOMEN LAW. J. 71, 71 (1915). Norris was likely one of many hundreds of jurors who participated in the event, otherwise known as the 1915 World’s Fair at San Francisco. See *The 1915 World’s Fair*, NAT’L PARK SERV., [https://www.nps.gov/goga/planyourvisit/upload/PPIE\\_1915\\_0304.pdf](https://www.nps.gov/goga/planyourvisit/upload/PPIE_1915_0304.pdf)

have created more separation between Norris and her female colleagues.

Similarly, the Journal reported in its April 1914 issue that Norris wrote and released a new play, *The Trial of Jesus Christ before the Grand Sanhedrin and Pontius Pilate*, available for purchase at a cost of twenty-five cents from the publisher, the Madeleine Sophie Guild.<sup>82</sup> Apparently, however, the two inches of copy dedicated to the announcement was insufficient for Norris. In the next issue, an *errata* noted the Association's "regret" for omitting a summary of the play, and further claimed, "Mrs. Jean H. Norris . . . has justly received widespread recognition as an author of the booklet."<sup>83</sup>

The play, never publicly performed and apparently lost to history, offered legal analysis of Jesus Christ's seizure and execution.<sup>84</sup> In an interview about the drama, Norris opined "many rules of procedure were violated and disregarded."<sup>85</sup> Norris dissected the process—from Christ's arrest, to the lack of evidence against him, to the imposition of a sentence of death—declaring each part to be unlawful and violative of due process norms even as they existed at the time. Indeed, she declared Pilate's men were "so prejudiced against the prisoner as to be unfit to try Him."<sup>86</sup>

Such declarations might now be seen as somewhat prophetic given the circumstances surrounding Norris's own "trial" twenty years later while facing removal from the bench for allegedly being "unfit." But they also contrasted with Norris's views on law and the legal system at the time, which she saw as a place of great promise.<sup>87</sup>

Indeed, the *Trial of Christ* article went on to recount how Norris's unexpectedly early widowhood left her nearly destitute in her twenties.<sup>88</sup> She described how a life in law and government saved her. While she was a young widow, the late Timothy Woodruff, former Lieutenant Governor of New York and Republican Party leader, took Norris on as his secretary. From there she worked for the state Comptroller learning about government finance. And all the while her father, Major John Giles Noonan—a former soldier who was also active in the Republican

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[<https://perma.cc/64TW-PMPQ>] (last visited Jan. 26, 2019).

82. *Pamphlets and Magazines*, 3 WOMEN LAW. J. 50, 50 (1914). The Madeleine Sophie Guild was a group formed under the auspices of the St. Helen's Settlement Home in Brooklyn. See *Settlement Workers Plan Lecture Course*, BROOK. DAILY EAGLE, Nov. 13, 1913, at 4 (describing Norris as involved in the group's "mental hygiene" efforts).

83. *Pamphlets and Leaflets*, 3 WOMEN LAW. J. 60, 60 (1914).

84. *Woman Lawyer Writes on the Trial of Christ*, *supra* note 70, at 4.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

Party—pressed her to embrace a life of “duty and honor,” which ultimately led her to law school.<sup>89</sup>

### 3. Litigation and Heterodoxy in the Teacher-Mother Cases

Although not a mother herself, Norris also saw it as her duty to get involved in the fight on behalf of “teacher-mothers”—women who faced losing their jobs in New York’s school system because of marriage and pregnancy. Through these efforts Norris began to move beyond informal advocacy efforts and into that domain she previously claimed was for men alone—the world of litigation. And while she tried to toe the line to a certain degree, adopting a somewhat muted tone when it came to her advocacy strategies, there was no question that the teacher-mother work put her in the same company as out lesbians, polyamorous lovers, and others who directly threatened the traditional hegemonic norms of the day.

Pregnant bodies historically were banned from public schools—even when there to teach class.<sup>90</sup> Since child rearing was considered a woman’s domain, school officials believed a mother could not properly “divide herself between two duties—between her duty to her own child and her duty to the children in her classroom.”<sup>91</sup> Thus, public school systems generally hired only single women as teachers—presuming unmarried women could or would not become pregnant given norms of the day.<sup>92</sup> And married teachers who got pregnant frequently faced dismissal.<sup>93</sup>

Starting in 1913, New York City’s married women teachers and school staff challenged such policies.<sup>94</sup> In one of the earliest cases, Katharine Edgell of Erasmus High School in Brooklyn fought the

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89. *Id.*

90. SANDRA ADICKES, *TO BE YOUNG WAS VERY HEAVEN: WOMEN IN NEW YORK BEFORE THE FIRST WORLD WAR* 120–21 (1997); *see also* CLARE HANSON, *CULTURAL HISTORY OF PREGNANCY: PREGNANCY, MEDICINE, AND CULTURE: 1750–2000*, at 13–14 (2004).

91. *Teacher-Mother Question to Come up in Board*, BROOK. DAILY EAGLE, Feb. 18, 1913, at 8.

92. *See id.*; *see also* ALISON ORAM, *WOMEN TEACHERS AND FEMINIST POLITICS, 1900–1939* 185 (1996) (describing 90% of the women teachers in England during this period as “spinsters,” but noting a shift in the late 1930’s when single women became less desirable than married women teachers in public school settings).

93. *Teacher-Mother Question to Come up in Board*, *supra* note 91, at 8.

94. *See, e.g., id.*; *see also* *Ms. Wagner Put Under Suspension*, N.Y. TIMES, Nov. 12, 1914, at 9; *see also* *The Board of Education—Mrs. Wagner The Teacher-Mother to be Suspended*, SCHOOL, Nov. 12, 1914, at 97 (referring to the “test case” of Mrs. Wagner as a “campaign of hysteria”).

decision to deny her one-year of unpaid maternity leave.<sup>95</sup> In others, like that of Bronx Public School 14's acting principal Bridget Peixotto, women defended against dismissal based upon "neglect of duty for the purpose of giving birth to a child."<sup>96</sup>

The teacher-mothers' cause, which drew criticism from conservative circles, also brought women supporters together from all corners. For instance, Elizabeth Cady Stanton's daughter, suffragist Nora Blatch De Forest, used her position within the Women's Political Union to call out the double-standard applied to men and women teachers.<sup>97</sup> She quipped that if the former were permitted time off for war, the latter should be "granted such leave for the purpose of replenishing the supply of the country's children—future fighters, perhaps."<sup>98</sup>

More radical feminists like Henrietta Rodman, a teacher herself, also got involved. Rodman, infamous for wearing sackcloth dresses and brown socks as a form of protest against women's fashion expectations,<sup>99</sup> was already involved in numerous activist efforts including the Heterodoxy Club, a group that included lesbians, was open to women of color, and advocated "unorthodox" roles for all women—including the teacher-mothers.<sup>100</sup> In 1913, Rodman decided to marry her friend Herman de Fremery, a curator at the Natural History Museum, without reporting it to school officials as a show of solidarity with the teacher-mothers and to challenge the status quo.<sup>101</sup>

When the press wrote about Rodman's marriage and the surrounding circumstances—including its polyamorous features<sup>102</sup>—Rodman

95. See *Teacher-Mother Decision Pleases Suffragists*, BROOK. DAILY EAGLE, Mar. 7, 1913, at 4; *The Mother-Teacher's Case*, 3 WOMEN LAW. J. 1, 1 (1913).

96. See *Teacher Mother on Trial*, N.Y. TIMES, June 11, 1913, at 7.

97. *Teacher-Mother Decision Pleases Suffragists*, *supra* note 95.

98. *Id.*

99. See JUDITH SCHWARZ, RADICAL FEMINISTS OF HETERODOXY: GREENWICH VILLAGE, 1912–1940 17 (1986) ("Henrietta Rodman was both the guiding force behind the Liberal Club and a charter Heterodoxy member"); see also LINDA BEN ZVI, SUSAN GLASPELL: HER LIFE AND TIMES 215 (2005) (describing Rodman as beginning a trend of wearing "natural burlap sack dresses, sandals, and brown socks").

100. See generally SCHWARZ, *supra* note 99. Along with Charlotte Perkins Gilman of "Yellow Wallpaper" fame, Rodman established several groups in lower Manhattan to focus on women's issues. See NANCY COTT, THE GROUNDING OF MODERN FEMINISM 37–42 (1987) (providing further insight into Rodman and Gilman's shared efforts). Another group, the Feminist Alliance, tried to establish a "Feminist Apartment House" in the East Village. JOANNA LEVIN, BOHEMIA IN AMERICA, 1858–1920, at 362 (2009).

101. *Aided Mrs. Egdel, Married Herself*, N.Y. TIMES, March 19, 1913, at 8.

102. Rodman was cohabitating not just with her new husband, de Fremery, but his preexisting common law wife and several children the trio had taken in. See *Dr. Grant Quits the Liberal Club*, N.Y. TIMES, Sept. 12, 1913, at 7 (noting Rodman's marriage rocked the Church of the Ascension's Liberal Club, resulting in its President, Reverend Percy Stickney Grant, resigning).

admitted she withheld the information in violation of school policies to “make it a test case.”<sup>103</sup> “Wifhood and spinsterhood,” she went on, “are strictly personal and private affairs” that should not have to be reported to the schools or used as grounds for punishing or firing women teachers—particularly when men are not required to similarly report marital status to the schools.<sup>104</sup> Asked by the press what she would do if the School Board brought charges against her, Rodman said she would “[c]onsult a lawyer.”<sup>105</sup> She did not say who that attorney would be.

Norris entered the teacher-mother movement in March 1913. First, while President of the Women Lawyers’ Association she passed a resolution to support Edgell.<sup>106</sup> Here again, Norris did not directly challenge embedded essentialist assumptions within the policies—such as fathers being unable to serve as primary caretakers. Instead, she took a more measured stance, noting the City’s leave policies were not rational as they allowed teachers to study abroad but prohibited time off to give birth.<sup>107</sup> This, too, may have reflected a kind of feminist realist approach and only offered arguments that realistically would have traction at the time.

Initial advocacy efforts on behalf of the teacher-mothers seemed promising. Bridget Peixotto’s lawyer, Alfred J. Talley, removed her case from the administrative system to the court system to seek emergency relief.<sup>108</sup> Samuel Seabury, a well-known and respected trial judge in the state Supreme Court and a descendent of the first Episcopal bishop in the United States,<sup>109</sup> who was then seeking a seat on the appellate bench, received the application.<sup>110</sup> Seabury granted the requested writ of mandamus and ordered the school district to reinstate Peixotto.<sup>111</sup>

As with much of his work, Seabury used the Peixotto case as a

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103. *Id.*

104. *Id.*

105. *Id.*

106. *Women Lawyers with Mrs. Edgell*, N.Y. TIMES, Mar. 15, 1913, at 10.

107. *Id.*

108. *Teacher-Mother Appeals*, N.Y. TIMES, Nov. 2, 1914, at 9.

109. See Arthur E. Sutherland, Jr., *Due Process and Disestablishment*, 62 HARV. L. REV. 1306, 1322 (1949) (providing details of Bishop Samuel Seabury’s struggles and rise to power in the church in the United States).

110. See W. Bernard Richland, *The Man Who Rode the Tiger: The Life and Times of Judge Samuel Seabury* by Herbert Mitgang, 64 COLUM. L. REV. 180, 181–82 (1964) (book review) (detailing Seabury’s extensive legal career, including becoming New York’s youngest member of the judiciary at the age of twenty-eight).

111. See *People ex rel. Peixotto v. Board of Education of the City of New York*, 144 N.Y.S. 87 (N.Y. Sup. Ct., 1914), *rev’d* 106 N.E. 307 (N.Y. 1914). Note that the state trial court system in New York State is referred to as the “Supreme Court.”



platform to call out what he saw as governmental improprieties, advance his strong but earnestly-held views on the moral improvement of society, and make a name for himself.<sup>112</sup> He issued a written decision stating: “it seems to me self-evident that . . . [i]f she cannot be removed because of her marriage she cannot be removed for an act which is a natural incident of her marriage.”<sup>113</sup>

However, the state’s high court, the Court of Appeals, returned the matter to City and State education officials to resolve.<sup>114</sup> That is, it reversed Seabury’s decision—one that ironically, as later events would reveal, had been celebrated by the Women Lawyers’ Club under Norris’s leadership.<sup>115</sup> In addition, shortly thereafter, Seabury lost his bid for the Court of Appeals seat—in part due to resistance from lower-brow Tammany Hall Democrats who were taking hold of New York City government at this time.

Over time, Norris became more directly involved in the teacher-mother cause, serving as counsel of record for at least two women who lost their jobs—Lora Wagner, who taught at Curtis High School in Staten Island, and Sarah Breslow, a teacher at Public School 91 in Manhattan.<sup>116</sup> Each unsuccessfully sought unpaid maternity leave for purposes of “pregnancy and lactation.”<sup>117</sup>

Breslow’s cause was first taken on by another newly formed group under Rodman’s leadership. Largely comprised of fellow Heterodoxy Club members,<sup>118</sup> they dubbed themselves the League for the Civil Service of Women.<sup>119</sup> And somewhat surprisingly given her relatively

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112. See *The Teacher’s Right to Motherhood*, 47 Literary Digest 1051, 1051 (Nov. 29, 1913); see also Richland, *supra* note 110, at 181–83 (discussing Seabury’s legal career and his time on the bench).

113. *People ex rel. Peixotto*, 144 N.Y.S. at 92; see also *Samuel Seabury Dies on L.I.* at 85, N.Y. TIMES, May 7, 1958, at 1 (describing Seabury’s assent to the Court of Appeals following his Supreme Court career, as well as later work investigating the City’s Municipal Court). See also *infra* Part III.

114. *People ex rel. Peixotto v. Board of Education*, 106 N.E. 307 (N.Y. 1914); see also *Teacher-Mother Appeals*, N.Y. TIMES, Nov. 2, 1914, at 9.

115. See *Teacher-Mother Successful in Court*, 3 WOMEN LAW. J. 17 (1913).

116. See ERIC B. EASTON, *DEFENDING THE MASSES: A PROGRESSIVE LAWYERS BATTLES FOR FREE SPEECH* 91–93 (2018) (describing Norris’s role in helping organize legal strategy in teacher-mother cases).

117. *Married Teacher Appeals to Finley*, N.Y. TIMES, Oct. 5, 1914, at 4; see also *Mrs. Breslow Appeals to Dr. Finley*, SCHOOL, Oct. 8, 1914, at 47; *Mrs. Wagner Put Under Suspension*, *supra* note 94.

118. *New Fight to Save Teacher Mothers*, N.Y. TIMES, Oct. 1, 1914, at 20; see also Henrietta Rodman, *Shall Mothers Teach?*, 5 LIFE & LABOR 25, 25–27 (1915) (describing the establishment of the League).

119. See *Married Teacher Appeals to Finley*, *supra* note 117; *Teacher-Mothers Look to Mitchel*, N.Y. TIMES, Nov. 17, 1914, at 9.

reserved presentation and apparent ongoing commitment to traditional marital arrangements, Mrs. Jean Norris became head of the League's "law committee" while still President of the Women Lawyers' Club.<sup>120</sup> It is unclear if she was an actual member of the Heterodoxy Club.<sup>121</sup> But she was obviously working closely with some of its most radical core members.

Days after Breslow's suspension, the League's members took to the press.<sup>122</sup> In an interview with the *New York Times*, Rodman demanded a meeting with state education Commissioner John Finley.<sup>123</sup> In a separate letter to the *New York Tribune*, she called the City Board of Education members a bunch of "mother-baiters."<sup>124</sup> As a result of Rodman's statements about the School Board, Superintendent Maxwell summarily suspended her too, instituting administrative charges of gross misconduct and insubordination.<sup>125</sup>

On November 17, 1914, the same day Rodman was to face a preliminary hearing on her misconduct, she, Gilman, Norris, and other members of the League stormed the office of Mayor Mitchel seeking intervention.<sup>126</sup> Norris reported the meeting went well. But Rodman's probable cause hearing still went forward—with Norris as defense counsel. Here, too, perhaps another surprising move for Norris, both in terms of her prior rejection of litigation as women's work and likely views on Rodman's "sham" marriage.<sup>127</sup> Or maybe this was wholly consistent with her privately held opinions on matrimony or secret ambitions.

Norris lost the preliminary hearing—not an unusual occurrence given the minimal level of proof needed—but also was unprepared to

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120. See *New Fight to Save Teacher Mothers*, *supra* note 118.

121. I have not encountered Norris's name on any Heterodite lists. But given the somewhat secretive nature of the Club, in part because of governmental investigations, comprehensive rosters of members and attendees do not exist. See SCHWARTZ, *supra* note 99, at 23; see also Rachel, *Sentimental Novelist . . . and Gay Rights Activist?*, RESEARCHING GREENWICH VILLAGE HIST. (Nov. 2, 2012), <https://greenwichvillagehistory.wordpress.com/2012/11/02/fanniehurs/> [<https://perma.cc/XL78-AHG2>].

122. *Married Teacher Appeals to Finley*, *supra* note 117 (confirming the bylaws provided no married woman could become a teacher unless her husband was incapacitated or had abandoned her for three years).

123. *Id.*

124. See *Teachers to Get Maternity Leaves*, N.Y. TIMES, Nov. 13, 1914, at 8; see also *Teacher-Mothers Win Final Verdict*, N.Y. TIMES, Jan. 12, 1915, at 1 (recounting the "mother-baiter" comment was made after Wagner's suspension).

125. *Teachers to Get Maternity Leaves*, *supra* note 124; see also ADICKES, *supra* note 90, at 121 (describing Maxwell's infuriation and the related charges).

126. *Teacher-Mothers Look to Mitchel*, *supra* note 119.

127. *Id.*

proceed at the first trial setting.<sup>128</sup> More than this however, Norris and Rodman publicly fought about Rodman's refusal to follow Norris's legal advice to write a letter of apology to the School Board. Indeed, apparently without regard for the attorney-client privilege, the two women argued about the difference in strategy at the Board's offices, resulting in both being asked to leave and Norris ending her involvement in the case.<sup>129</sup> Rodman then retained well-known First Amendment attorney, Gilbert E. Roe, to defend her more vigorously at trial before the City School Board.<sup>130</sup> He also handled her appeal to State Commissioner of Education, John H. Finley, after she lost at trial.<sup>131</sup>

Rodman may have wanted a man as counsel all along. And this may have contributed to Norris's anger and seemingly improper action—at least by modern standards—of a “noisy withdrawal.”<sup>132</sup> In an essay published just a few weeks before Rodman's preliminary hearing—the one where Norris suggested women attorneys should probably avoid criminal cases and trial work altogether—Norris complained that it was not so much men who were holding women back as attorneys—but women themselves. That is:

The average woman seems to prefer the legal advice of a man. Not infrequently she will ask the woman lawyer of her acquaintance for her opinion as to the matter in which she is interested and for hints as to how to proceed, but when it comes to taking definite legal action, she will retain a man.<sup>133</sup>

In this way too, it seems that Norris had moved beyond her initial ideas for the appropriate role of the woman lawyer and saw herself as being in direct competition with male attorneys for the attention of women clients. And, indeed, while Roe took on Rodman's case, Norris continued her front-line representation for Breslow and Wagner. Their

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128. See *Henrietta Rodman Unready for Trial*, BROOK. DAILY EAGLE, Dec. 16, 1914, at 15.

129. See EASTON, *supra* note 116, at 91 (citing Brooklyn Daily Eagle, outlining disagreement between Rodman and Norris around strategy); see also *Henrietta Rodman Loses Her Counsel*, BROOK. DAILY EAGLE, Dec. 17, 1914, at 8.

130. See *School Board “Despotic”*, BROOK. DAILY EAGLE, Dec. 24, 1914, at 2 (recounting Roe and co-counsel's zealous statements to the press about the School Board's mistreatment of Rodman); see also *Try Miss Rodman for School Satire*, N.Y. TIMES, Dec. 23, 1914, at 12; *To Raise \$30,000 for Hungry Pupils*, N.Y. TIMES, Dec. 24, 1914, at 11.

131. See generally EASTON, *supra* note 116, at 91–92 (providing the first detailed account of the progressive free-speech lawyering efforts of attorney Gilbert Roe).

132. Dolores Dorsainvil, *Noisy Withdrawals and Rule 1.6 (Confidentiality)*, THE GAVEL (Apr. 20, 2012), <https://ylsgavel.wordpress.com/2012/04/20/noisy-withdrawals-and-rule-1-6-confidentiality-3/> [https://perma.cc/5MEN-4TB9].

133. Norris, *Increasing Opportunities for Women Lawyers*, *supra* note 62, at 255.

appeals also wound up before Commissioner Finley—along with the cases of Bridget Peixotto and approximately fifteen other teacher-mothers.<sup>134</sup>

On January 11, 1915, in a long-awaited and well-publicized written decision, Dr. Finley finally decided school officials could not fire a married teacher for giving birth, particularly as it was not against the law for married women to hold positions in schools.<sup>135</sup> Thus, Peixotto and most of the other teacher-mothers were reinstated along with back pay to the time of their suspensions.<sup>136</sup> This was seen as a significant turning point for the rights of women workers in New York.<sup>137</sup>

Norris did not win such relief for her clients, however. Commissioner Finley found Breslow and Wagner failed to fully exhaust their legal claims before proceeding to his office.<sup>138</sup> It is unknown whether this procedural default—a trap still used today in the legal system by decision-makers to head off successful claims<sup>139</sup>—resulted from Norris's advice. Either way, the denial may have also been meant to punish Norris and the other outspoken women leaders in the movement for going too far—even as Norris tried to strike a middle-path with Rodman.

Rodman, still represented by Roe, also failed to prevail. In June 1915, five months after the rest of the teacher-mother matters were resolved, Finley upheld Rodman's suspension for ten months for "gross misconduct" for characterizing the Board's actions as "mother-baiting."<sup>140</sup> Without venturing to define what that term actually meant, Finley found Rodman could be liable for lack of "respect, fairness, and

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134. See *Teacher-Mothers Look to Mitchel*, *supra* note 119; *Teacher-Mothers Win Final Verdict*, *supra* note 124.

135. Dr. Finley wrote: "[T]he Board of Education should have . . . given at least as favorable consideration to an absence for child-birth as is normally given to absences asked for reasons of personal convenience, or minor or grave illness, or for purposes of study and travel, or of improving health." *Teacher-Mothers Win Final Verdict*, *supra* note 124. This was especially so given that child birth was a most "creditable social reason." Rodman, *Shall Mothers Teach?*, *supra* note 118, at 27.

136. *Gives Place Back to Teacher-Mother*, N.Y. TIMES, Feb. 4, 1915, at 5; see also *The Board of Education—Teacher-Mothers Restored to Office*, SCHOOL, Feb. 11, 1915, at 227.

137. ADICKES, *supra* note 90, at 122–23 (explaining that New York became a leader and outlier as compared to other jurisdictions as a result of the decision).

138. They presented their requests to the District Superintendents and then Commissioner's office—instead of stopping off in between for the Board of Education to rule on their matters. *Henrietta Rodman Loses on Appeal*, N.Y. TIMES, June 9, 1915, at 9.

139. See generally Timothy J. Foley, *The New Arbitrariness: Procedural Default of Federal Habeas Corpus Claims in Capital Cases*, 23 LOY. L.A.L. REV. 193 (1989).

140. *Henrietta Rodman Loses on Appeal*, *supra* note 138.

scrupulous regard for the truth.”<sup>141</sup> That is, there was no abuse of discretion in the findings.<sup>142</sup> This was particularly true, Finley noted, given Rodman’s extremely high intelligence—which supported a finding of gross misconduct versus mere malfeasance.<sup>143</sup> This may have provided Norris a foreboding example of the ways in which women faced harsh penalties when seen as too smart for their own good—or their gender.

*C. Introduction to the Women’s Court and its Controversies*

While Norris was heading up the teacher-mother litigation, Anna Moscovitz was leading efforts to give life to Bertha Rembaugh’s call for volunteer defenders in the Women’s Court. Already serving as a social services volunteer at Reverend Percy Stickney Grant’s Church of the Ascension, in 1913, Moscovitz established a Legal Committee at the church.<sup>144</sup> Under this banner she recruited pro bono attorneys from the Women Lawyers’ Association to represent women in the Night Court.<sup>145</sup> This included Norris.

While not much is known about Norris’s Women’s Court cases and clients, the venue’s controversies during this time provide context for her later professional experiences. This period also offers additional insight into Norris as a feminist legal realist who embraced seemingly competing commitments and opinions to strategically advance her causes. It further serves as a window into the ways in which official investigations and counter-investigations were bandied about during this time as political advocacy tools.

By 1915, Moscovitz was named Chairperson of the Legal Committee of the Forum of the Church of the Ascension.<sup>146</sup> At the time, the Women Lawyers’ Journal declared: “Mrs. Jean H. Norris, Miss Bertha Rembaugh, Mrs. Mary M. Lilly, Miss Anna Moscovitz, Miss Amy Wren, and Miss Sarah Stephenson . . . are numbered among the women leaders of the New York bar . . . [who] . . . volunteered to act as

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141. *Id.*

142. *Id.*

143. *Id.*

144. *Revisiting Anna Moscovitz Kross*, *supra* note 27, at 676–78 (describing the court as a public spectacle).

145. *Id.* at 678–79, 682.

146. Anna Moscovitz, *The Night Court for Women in New York City*, 5 WOMEN LAW. J. 9, 9 (1915); Anna Moscovitz, *The Opportunity of the Woman Lawyer in the Criminal Court*, 4 WOMEN LAW. J. 86, 86 (1914); *see also* *Dr. Grant Quits the Liberal Club*, N.Y. TIMES, Sept. 12, 1913, at 7.

counsel for women prisoners in the New York Woman's Night Court."<sup>147</sup> Here again such efforts would seem to stand in contrast to statements Norris made earlier in her career that women lawyers should avoid criminal practice as a seemingly male endeavor. However, this might be because Norris and others did not see Women's Court work as criminal—but more closely akin to general civil or family law.<sup>148</sup>

In the meantime, Judge Howard Nash wrote to the May 1915 issue of the *Women Lawyers' Journal* to urge women to avoid both indigent defense work and criminal judgeships.<sup>149</sup> Nash instead invited women to serve as probation officers,<sup>150</sup> where their natural instincts could help in "rehabilitating [the] home."<sup>151</sup> He was not alone in trying to keep women attorneys from serving as indigent defense counsel, despite a continuing desperate need for free representation—especially in the City's Magistrate Courts. A combination of sexism and territorialism rooted in self-interest appears to have been deployed against the women to try to eject them from the venue.

As Barbara Babcock's important work has recounted,<sup>152</sup> the nation's first public defender's office was established in Los Angeles, California in 1913.<sup>153</sup> It was led by Clara Foltz, an early woman attorney and criminal law reformer.<sup>154</sup> But across the rest of California—and the country—commentators continued to bemoan a justice system that left many indigents without representation to help contest charges brought against them.<sup>155</sup>

By 1914, despite the work of Edwin Gibson's criminal unit at the Legal Aid Society, these concerns were front and center in the New York City legal community. Two main possibilities for free defense counsel

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147. Marion Weston Cottle, *Women in the Legal Profession*, 4 *WOMEN LAW. J.* 60, 60 (1915).

148. See *supra* note 57 and accompanying text; see also *Revisiting Anna Moscovitz Kross*, *supra* note 27, at 686–88 (discussing the ways in which women facing prostitution charges were managed like children).

149. Howard P. Nash, *Woman's Place in the Administration of the Criminal Law*, 4 *WOMEN LAW. J.* 57, 64 (1915).

150. *Id.*

151. *Id.* at 57.

152. See generally BARBARA BABCOCK, *WOMAN LAWYER: THE TRIALS OF CLARA FOLTZ* (2011).

153. See *id.*; see generally MAYER C. GOLDMAN, *THE PUBLIC DEFENDER: A NECESSARY FACTOR IN THE ADMINISTRATION OF JUSTICE* (2d ed. 1919); see also Walton J. Wood, *The Public Defender of Los Angeles County, Cal.*, 5 *J. AM. INST. CRIM. L. & CRIMINOLOGY* 283, 283–84 (1914).

154. See generally BABCOCK, *supra* note 152.

155. See, e.g., R.S. Gray, *The Advisability of a Public Defender*, 32 *ANNS. OF THE AM. ACAD. OF POL. & SOC. SCI.* 177, 177 (1914).

emerged—further volunteer pro bono services by charitable groups like Legal Aid or the creation of a government funded public defender system.<sup>156</sup>

Attorney Mayer Goldman, Chairperson of a subcommittee of the New York County Lawyers' Association tasked with investigating these options, noted his preference for a public defender system.<sup>157</sup> As for volunteer attorneys—presumably including groups like Kross's Church of the Ascension Committee—Goldman feared their practices generated an underground economy of “shyster” and “snitch” lawyers who, “without character, ability or conscience,” could extort fees from desperate and unknowledgeable defendants.<sup>158</sup> Similarly, Goldman feared many volunteers lacked the requisite experience.<sup>159</sup>

Others, like Judge Nott of the Court of General Sessions, opposed the idea of a paid public defender system. First, it was illogical to have the government both prosecute and defend defendants. Second, the political nature of a government-funded position might undermine what Nott saw as the appropriate defender role. That is, a contest between two arms of the state would result in defenders focusing on winning—rather than seeking the truth.<sup>160</sup> Thus, he helped to create a group of specially chosen gentile voluntary defenders to supplement the work of the Legal Aid Society, overseen by a Voluntary Defenders' Committee (VDC).<sup>161</sup> But here, too, it was unclear how much the VDC's Committee, comprised of socialite notables, saw the low-level Magistrates' system as a priority.<sup>162</sup> It was against this backdrop, as she continued to call out

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156. Today these approaches have been consolidated at the New York City Legal Aid Society, which is now funded by the government.

157. Mayer C. Goldman, *The Necessity for a Public Defender*, 5 J. AM. INST. CRIM. L. & CRIMINOLOGY 660, 661–665 (1914); see also R.S. Gray, *supra* note 155, at 178 (President of the Legal Aid Society of New York “bemoaned the inadequacy” of the “relief” his offices could provide); see also SPECIAL COMMITTEE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, EQUAL JUSTICE FOR THE ACCUSED 43–45 (1959) (recounting that at the outset the Legal Aid Society focused on the legal needs of immigrants).

158. GOLDMAN, *supra* note 153, at 16–19 (appointment was usually “without compensation” to lawyers known also as “vampires” or “harpies”). Robert Ferrari, another member of the New York County Lawyers' Association, bemoaned that “[t]wenty-five years ago the bar of New York city was eminently respectable” but the new admits—apparently including women—made up “the warp and woof of the legal ‘profession’” as they had “no money, no connections, no rank, no sense of responsibility, no loyalty to the profession . . .” Robert Ferrari, Editorial, *The Practice of Law: Is it a Profession or a Business?*, 5 J. AM. INST. CRIM. L. & CRIMINOLOGY 479, 479–83 (1914).

159. GOLDMAN, *supra* note 153, at 16–19.

160. Mayer Goldman, *Notes and Abstracts: The Need for a Public Defender*, 8 J. CRIM. L. CRIMINOLOGY, & POLICE SCI. 273, 273–75 (1917).

161. *Id.* at 273.

162. See *Notes and Abstracts: The Voluntary Defenders Committee*, 8 J. AM. INST. CRIM. L. & CRIMINOLOGY 278, 278, 282 (1917).

Women's Court corruption, that Anna Moscovitz and her Church of the Ascension Legal Committee came under fire for their volunteer defense work.

Moscovitz continued to call out corruption in the Women's Court.<sup>163</sup> She reported that unscrupulous vice officers were still trapping many innocent women with "decoys" who offered large sums of money to women who just happened to be out for entertainment.<sup>164</sup> Bondsmen were informed of the arrests and charged exorbitant fees to arrange for release.<sup>165</sup> Thus, many women were merely guilty of trying to embrace their independence.<sup>166</sup> Thus, unlike the VDC, which deferentially suggested sitting judges served as a check on most improprieties,<sup>167</sup> Moscovitz and others affiliated with the Church of the Ascension directly implicated the bench along with probation officers, police, prosecutors, and bondsmen.<sup>168</sup>

On January 24, 1917, after two and half years of "hostility . . . smouldering" between the woman-led defender group and Women's Night Court stakeholders, the conflict suddenly "burst into a flame."<sup>169</sup> "Charges and counter charges flew thick and fast" between Gerald Van Casteel, the Assistant District Attorney assigned to the court, and Moscovitz's volunteer Committee on the other.<sup>170</sup>

Van Casteel accused the group of "bleeding the poor unfortunate girls" brought before the court by seeking payment for services when they claimed to be volunteers.<sup>171</sup> He asserted the family of one woman was asked by a "volunteer" lawyer for \$200 to get her released.<sup>172</sup> Another Ascension Committee volunteer supposedly requested a \$30 representation fee from another woman.<sup>173</sup> In addition Van Casteel

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163. See *Revisiting Anna Moscovitz Kross*, *supra* note 27, at 680–81.

164. *Id.*

165. *Id.*

166. *Id.* (stating that Moscovitz viewed prostitution as a "social problem in need of attention" and not something to be dealt with my criminal sentencing).

167. *The Voluntary Defenders Committee*, *supra* note 162, at 279.

168. Moscovitz, *supra* note 146, at 13; see also *Would Have Courts 'Manned' by Women*, N.Y. TIMES, Feb. 26, 1915, at 6 (reporting on Rev. Grant's public statements about the need for women judges and other representatives in the Women's Night Court); *Night Court Suggestions*, 5 WOMEN LAW. J. 13, 13 (1915) (complaining that the Women's Night Court probation officer can be found "first questioning the offender" then "whispering the knowledge she has gained in the magistrate's ear, and for all any one in the court room knows, passing sentence on the culprit.").

169. *Lawyers in Clash in Women's Court*, N.Y. HERALD, Jan. 25, 1917, at 3.

170. *Id.*

171. *Id.*; see also *Lawyers in Clash in Women's Court*, *supra* note 169.

172. *Will Hear Court Grafting Charge*, N.Y. TRIBUNE, Jan. 25, 1917, at 5.

173. *Lawyers in Clash in Women's Court*, *supra* note 169, at 3. Interestingly, in both instances the accusations were made against men who were working as part of Moscovitz's volunteer



complained that Moscovitz had personally “abused” him after he convicted one of the Committee’s clients, shouting that “sooner or later she was going to get [him] out of there.”<sup>174</sup> He went on: “The whole trouble is due to Anna Moskowitz [sic] . . . She is temperamentally unfitted for the work of defending the unfortunates who are brought to court.”<sup>175</sup>

Representatives of the Ascension Committee, other than Norris, took to the press to combat the accusations. For instance, Reverend Grant countered that the allegations were entirely unfounded.<sup>176</sup> Moscovitz’s sister Henrietta, the Committee’s secretary, suggested prosecutors and judges were mad because her sister’s team was winning cases.<sup>177</sup> And Moscovitz herself, after clarifying that the only funds collected were “voluntary contributions,” called for fuller investigation of Women’s Court.<sup>178</sup> That is, she sought review by state-level officials in Albany—including a complete inquiry into the actions of the Women’s Court prosecutors, judges, and city police “vice” squad.<sup>179</sup>

Newspapers covered the controversy for a few days.<sup>180</sup> However, the conflagration fell away from public attention thereafter. That might be because, in the middle of the Women’s Court defender scandal, Swann faced his own ethics charges. The City Club asked Governor Whitman to remove Swann from office for a range of improprieties, including dismissing cases as political favors.<sup>181</sup> Swann told reporters that he believed the Club’s complaints were intended to stop him from proceeding with his investigations.<sup>182</sup>

With Swann otherwise engaged, Moscovitz and her Women Lawyers’ Association colleagues pressed forward.<sup>183</sup> For instance, in mid-1917, Moscovitz, who after marrying that year began using the

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committee.

174. *Vice Charge Promises Shake-Up*, N.Y. EVENING J., Jan 24, 1917.

175. *Blame Woman Lawyer*, BROOK. DAILY EAGLE, Jan. 24, 1917, at 2.

176. *Lawyers in Clash in Women’s Court*, *supra* note 169, at 3.

177. *Id.*

178. *Vice Charge Promises Shake-Up*, *supra* note 174.

179. *Night Court Fight to be Albany Issue*, N.Y. HERALD, Jan 28, 1917, at 8; *Church Legal Committee, Accused of Vice Profit to Demand Investigation*, RICHMOND PALLADIUM AND SUN-TELEGRAM, Feb. 2, 1917, at 8.

180. *Referee for Church Case*, EVENING WORLD (N.Y.), Feb. 17, 1917, at 8; *see also supra* notes 169–76.

181. This “good government” group was established in the late 1800’s by prominent men of New York City. *The New City Club*, N.Y. TIMES, Mar. 19, 1892, at 4; *see also Indict Breckinridge as Swann Replies*, N.Y. TIMES, Jan. 27, 1917, at 5.

182. *Swann Sees Evil at Work*, N.Y. TIMES, Sept. 1, 1917, at 6.

183. *See, e.g., Revisiting Anna Moscovitz Kross*, *supra* note 27, at 680–81.

name Anna Moscowitz Kross,<sup>184</sup> issued a public letter to Mayor Mitchel calling out the City's failure to curtail corruption relating to prostitution cases.<sup>185</sup> In June 1919, Sara Stephenson and Amy Wren spoke to the press and government officials about the continuing problem of false accusations. Wren noted that officers would go so far as to wear fake military uniforms to lure young women to free military dances and then arrest them for illegal "treating" activities.<sup>186</sup>

It is unclear whether Norris remained a defender in the Women's Court during this period. Despite her usual penchant for the spotlight, her name was notably missing from public accounts between 1917 and 1919. Such silence, which occurred right around the time women won the vote in New York in November 1917,<sup>187</sup> may have been a strategic move on Norris's part. Indeed, just two years later, chosen over other members of the Women Lawyers' Association, Norris was appointed to serve on the Women's Court bench. Thus, she became the first woman judge in New York State.<sup>188</sup>

## II. WOMAN JUDGE: FIRST FEMALE JURIST ON AND OFF THE BENCH IN NEW YORK STATE

### *A. Initial Unlikely—and Precarious—Appointment to the Women's Court Bench*

On October 27, 1919, the City's new mayor, Tammany Hall Democrat John Hylan, tapped Mrs. Jean Hortense Norris to fill a temporary vacancy in the Magistrate's Court due to the illness of another judge.<sup>189</sup> This was an important moment in history not just because Norris became the first woman judge in New York even before the Nineteenth Amendment took effect.<sup>190</sup> It occurred at a time of great

184. *Id.* at 669 n.10 (Moscowitz married Isador Kross in 1917).

185. *See id.* at 681–82.

186. *Brooklyn Women Protest Arrest of Innocent Girls*, BROOK. DAILY EAGLE, June 29, 1919, at 4.

187. *See, e.g., Swinging the Circle with the New Voters*, 4 WOMAN CITIZEN 333, 333 (1919); SUSAN GOODIER & KAREN PASTORELLO, WOMEN WILL VOTE: WINNING SUFFRAGE IN NEW YORK STATE 183–84 (2017).

188. *Mayor Appoints Mrs. Jean Norris City Magistrate*, EVENING WORLD (N.Y.), Oct. 27, 1919, at 1. Moscowitz was appointed as the City's first female assistant corporation counsel for the City of New York in 1918, where she handled family law and child support matters. *See Corporation Counsel*, WAUSAU DAILY HERALD, Dec. 19, 1918, at 2.

189. *Mayor Appoints Mrs. Jean Norris City Magistrate*, *supra* note 188.

190. *See generally* Jennifer K. Brown, *The Nineteenth Amendment and Women's Equality*, 102 YALE L.J. 2175 (1993).

change and impending lawlessness in the City. Military members were returning from World War I, the Eighteenth Amendment was ratified to ban alcohol, the Volstead Act had been enacted to enforce prohibition, and the speakeasy and bootleg trade was being born.<sup>191</sup>

Mayor Hylan assigned Norris to the Manhattan Women's Night Court and strongly suggested her thirty-day initial term would be extended.<sup>192</sup> When asked by the press about her views on the Women's Court, Norris, who by now had taken another feminist realist turn—becoming not just a Democrat but a respected Tammany leader—strategically avoided any substantive statements.<sup>193</sup> Instead—although clearly aware of the institution's many controversies—she claimed she would need to study conditions further before offering any opinions about the need for change in the court.<sup>194</sup>

Despite her coy response, many believed Norris was sent to the Women's Court to address improprieties flagged by her Women Lawyers' Association colleagues.<sup>195</sup> Just a few months before new bail rules and sessions were moved from the evening to the day, in part to draw fewer crowds looking for spectacle and entertainment.<sup>196</sup> And Norris's appointment followed close on the heels of the first woman prosecutor, Rose Rothenberg, being assigned to the Women's Court.<sup>197</sup> Interestingly, however, Mayor Hylan did not arrange to have a woman defense attorney—or any defender—assigned to the court. Instead, he named Anna Moscovitz Kross as the City's first woman Assistant Corporation Counsel, which took her away from her Church of the Ascension and Women's Court work to focus on family law and child support cases on behalf of the City.<sup>198</sup>

Others suggested Norris's selection was part of a larger political strategy to block success of Republicans who were now losing their

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191. See generally DAVID WALLACE, *CAPITAL OF THE WORLD: A PORTRAIT OF NEW YORK CITY DURING THE ROARING TWENTIES* (2012); JOHN M. MURTAGH & SARA HARRIS, *CAST THE FIRST STONE* 227–44 (1957); see also Tara Isabella Burton, *The Feminist History of Prohibition*, JSTOR DAILY ONLINE (Jan. 6, 2016), <https://daily.jstor.org/feminist-history-prohibition/> [<https://perma.cc/3RTJ-YDSC>]; Dominic Sandbrook, *How Prohibition Backfired and Gave America an Era of Gangsters and Speakeasies*, THE GUARDIAN (Aug. 25, 2012), <https://www.theguardian.com/film/2012/aug/26/lawless-prohibition-gangsters-speakeasies> [<https://perma.cc/A9US-XJ2B>].

192. *Mayor Appoints Mrs. Jean Norris City Magistrate*, *supra* note 188; Roland Corthell, *Up to Date*, 91 J. EDUC. 73, 73 (1920).

193. *Mayor Appoints Mrs. Jean Norris City Magistrate*, *supra* note 188.

194. *Id.*

195. *Mrs. Jean H. Norris Appointed to the Bench*, N.Y. TIMES, Oct. 28, 1919, at 4.

196. See *Revisiting Anna Moscovitz Kross*, *supra* note 27, at 681.

197. *Mrs. Jean H. Norris Appointed to the Bench*, *supra* note 195.

198. See *Revisiting Anna Moscovitz Kross*, *supra* note 27, at 682.

foothold in New York.<sup>199</sup> Indeed, at the time Norris was working alongside Tammany boss George W. Olvany as a co-district leader.<sup>200</sup> Norris's surprising appointment also occurred while her Women Lawyers' Club colleague and mentor, Bertha Rembaugh, a Republican, was running her own public campaign to become New York's first woman judge.<sup>201</sup> Thus, there was further speculation that Norris, an "astute politician," advanced her interests, and implicitly those of the Democratic party, over the interests of her friend and a more experienced woman.<sup>202</sup>

No matter the motivations for her appointment, from the beginning, Norris was placed under a microscope with a gendered lens.<sup>203</sup> For instance, an early news piece noted that "she wore a string of pearl beads around her throat," "had a keen grey eye," and "a hat of velvet."<sup>204</sup> Five years later, reporters were still remarking on her pearls, broach, and "two piece knitted suit of light brown color," which they claimed helped her retain the air of a "society woman" amongst all the "sordid stories she is forced to listen to" in the Women's Court.<sup>205</sup> And the City's African-American newspaper, the New York Age, commented, "[t]hat she is entirely feminine was evidenced by a



199. See WILLIAM E. NELSON, *THE LEGALIST REFORMATION: LAW, POLITICS, & IDEOLOGY IN NEW YORK, 1920-1980*, at 20-21 (2001).

200. She also served as Vice Chairman of the Democratic Executive Committee for the election of Robert J. Luce to the Supreme Court. See *Open Luce Headquarters; Young Republican Club Seeks Election of Newburger and McCook*, N.Y. TIMES, Oct. 5, 1919, at 12. She further helped Democratic Senator Foley in his run for a surrogate's court seat. *Mrs. Norris, On Bench, Sees Flotsam of Woman's Court, Wears String of Pearls*, BROOK. DAILY EAGLE, Oct. 28, 1919, at 1; see also Louis Prashker, *Tribunes of the People by Raymond Moley*, 8 ST. JOHN'S L. REV. 220, 222 (1933) (book review) (noting Norris did not need anyone to advocate on her behalf to Tammany as she was a district co-leader with Olvany).

201. *Id.*; see also Hildegath Hawthorne, *A Woman Candidate for Judge*, N.Y. TIMES, Oct. 26, 1919, at 99 (supporting Rembaugh as the first woman seeking judgeship).

202. *Mrs. Norris, On Bench, Sees Flotsam of Woman's Court, Wears String of Pearls*, *supra* note 200.

203. See, e.g., *First Woman Magistrate Judges Fallen Sisters*, N.Y. TIMES, Nov. 9, 1919, § 4 (Magazine), at 9 (reporting Judge Norris was "centre stage" on her first day, with male spectators coming to court simply to watch "the show" of a woman on the bench).

204. *Mrs. Norris, On Bench, Sees Flotsam of Woman's Court, Wears String of Pearls*, *supra* note 200.

205. Espensheid, *supra* note 47.

chic grey ensemble with matching suede pumps and stockings.”<sup>206</sup> Throughout Norris’s career as a public official, press and other accounts detailed her physical appearance, attire, and deportment in ways they did not describe male jurists or government officials. This is a phenomenon that would appear to continue to this day.<sup>207</sup>

Norris also labored under exceedingly-high, and sometimes conflicting, professional expectations. Commentators repeatedly evaluated her intelligence, legal acuity, and decision-making abilities.<sup>208</sup> Unlike her male colleagues, Norris’s first days on the bench were carefully covered, as if a sporting match, with each evidentiary call and bail decision reported and parsed by the press.<sup>209</sup> She was obviously expected to walk fine lines—serve as a forgiving and caring mother-type but not a push-over; appear unemotional but not detached; mentor other women but resist radical feminist ideology; and fearlessly reform problems in the justice system while also remaining demurrer.<sup>210</sup> Any false step or failure to sufficiently discern judicial expectations in light of her sex could be costly. From the start, it would seem, her position was precarious, if not impossible.

### *B. Reappointment and Increasing Profile throughout the Twenties*

In 1920, Mayor Hylan reappointed Norris to serve out the tenure of

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206. Maybell McAdoo, *Women’s Realm in Current Topics: Woman Magistrate Advises Regulation of Harlem’s Dance Halls and Cabarets*, N.Y. AGE, April 11, 1925, at 3.

207. See Deidre Clemente, *A President in a Pantsuit?*, THE CONVERSATION, (Nov. 7, 2016, 12:06 P.M.) <https://theconversation.com/a-president-in-a-pantsuit-68286> [<https://perma.cc/EJC5-LLWE>] (“As a historian of women and clothing, I see Clinton’s pantsuit—and those who criticize it—as the latest chapter in a long history of people telling women what they can and can’t wear.”); see also Natalie Geismar, *Why Are We Still Talking About Hillary Clinton’s Clothes?*, MS. MAG., (June 13, 2016) <http://msmagazine.com/blog/2016/06/13/the-one-battle-female-politicians-just-cant-win/> [<https://perma.cc/9RRU-JSBL>].

208. *A Woman Magistrate*, N.Y. TRIB., Oct. 30, 1919, at 10 (“Her work will be closely watched.”); *N.Y. Woman Magistrate Is Making Record*, N.Y. AGE, July 26, 1924, at 1 (opining that after five years of evidence, “Doubting Thomases” who did not believe Norris could handle the role of jurist as a woman were proven wrong).

209. See, e.g., *Mrs. Norris, On Bench, Sees Flotsam of Woman’s Court, Wears String of Pearls*, *supra* note 200 (providing a detailed account and commentary regarding nearly every movement Norris made on day one); *First Woman Magistrate Judges Fallen Sisters*, *supra* note 203 (same).

210. See, e.g., Blanche Brace, *When Judges and Mothers Get Together*, 6 WORLD OUTLOOK MAG. 8 (1920); see also *Mrs. Norris, On Bench, Sees Flotsam of Woman’s Court, Wears String of Pearls*, *supra* note 200 (lauding Norris for not being “an emotional woman”); *First Woman Magistrate Judges Fallen Sisters*, *supra* note 201 (commenting favorably on Norris’s “air of impersonal detachment” when sex acts are described in court); *A Woman Magistrate*, *supra* note 208 (“The obligations of pioneers rest on her.”); *New York’s First Woman Magistrate Mixes Justice with Common Sense*, 64 LITERARY DIG. 59, 59–62 (Feb. 21, 1920) (recounting fears that Norris would be either “wishy-washy or merciless”).

another judge who conveniently left his position to become Manhattan Borough President.<sup>211</sup> This would keep Norris on the bench at least through the end of the decade. Once in her more permanent placement, Norris split her time between the Magistrates' system's Women's Day Court, which still handled large numbers of cases of girls between the ages of sixteen and twenty-one, and its Court of Domestic Relations, which dealt primarily with child-support enforcement.<sup>212</sup> Here, again, she continued to focus on cases that crossed the civil-criminal divide.

Although the gendered assessments continued, and the Women Lawyers' Journal had little to say about Norris's reappointment,<sup>213</sup> nearly all press accounts during the 1920s depicted Norris favorably. A wide range of news outlets described her as fair and compassionate to those who appeared before her, as well as proportionate and individualized in her sentencing practices.

For instance, in 1920, World Outlook Magazine, a United Methodist Church periodical, reported on Norris's unique approach to the cases of allegedly "wayward" girls.<sup>214</sup> Norris was concerned with more than cold application of the law; she wanted to know their life stories.<sup>215</sup> "One cannot deal with these women in the herd," she was quoted as saying.<sup>216</sup> Instead, "[p]eople are individuals when they are brought into the Women's Court; and they must be treated as individuals if anything is to be done for them. One should know the case and the condition, and render decisions as justly as possible, tempered by mercy, though not by sentiment."<sup>217</sup>

World Outlook and other periodicals further covered her decision to meet over lunch with the immigrant mothers of two girls facing sentencing to better understand their home lives.<sup>218</sup> The guardians were offensively described as "foreign-born mothers from the slums" with "slow tongue" accents, "big-knuckled hands," and "dressed in an incongruous assemblage of the family's finery."<sup>219</sup> But Norris, it was

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211. See *N.Y. Woman Magistrate Is Making Record*, *supra* note 208; *New York's First Woman Judge*, 4 WOMAN CITIZEN 710, 710-12 (1920).

212. Jean H. Norris, *The Magistrate*, CAREERS FOR WOMEN 278 (Cathleen Filene, ed. 1920).

213. See *Judge Jean Norris*, 9 WOMEN LAW. J. 12 (Feb. 1920). The October-December 1919 issue made no mention of the appointment. See Jean H. Norris, *National Federation of Business and Professional Women's Clubs*, 9 WOMEN LAW. J. 1, 1-2 (1919).

214. See Brace, *supra* note 210.

215. *Id.*

216. *Id.*

217. *Id.* at 8.

218. *Id.*; see also *Sets Bar Precedent*, THE RICHMOND ITEM, Nov. 6, 1919, at 7.

219. Brace, *supra* note 210, at 8.

noted, wore on her face the same look of worry for the girls as their mothers did.<sup>220</sup> In the end she imposed probationary sentences because of her concern for the parents, very much in line with the calls for leniency made by Bertha Rembaugh years before.<sup>221</sup> While Norris's meeting might challenge modern due process norms, in acknowledging the collateral consequences of sentencing on the whole family in some ways, Norris also could be seen as ahead of her time.<sup>222</sup>

In Canada, serving as a visiting judge in 1921, Norris expressed similar sentiments about family needs when one member is involved with the criminal justice system.<sup>223</sup> In a theft case, the presiding Canadian judge could have immediately sentenced the defendant to five years in a penitentiary. But Norris leaned over, whispered in the judge's ear, and advocated on the defendant's behalf, expressing concern for his "wife and a small child who were dependent on him for support."<sup>224</sup> Called a "good angel" by the *New York Times* for demonstrating such empathy, Norris's recommendation resulted in the defendant's release.<sup>225</sup>

The *New York Age* also described Norris as "merciful to the erring, but . . . easily becomes stern and positive with the wrongdoer who seeks to take advantage of the judge's sex by misrepresenting facts or evading truthful answers to questions."<sup>226</sup> The *Age's* owner and editor, Fred Randolph Moore, purchased the paper with support from Booker T. Washington and used it to advance concerns of the Black community.<sup>227</sup> Moore personally vouched for Norris in 1924, after she had been on the bench for five years, as demonstrating "a most intense interest for the colored girls who appear in her court."<sup>228</sup>

Moore further noted, "Judge Norris has shown her merciful inclinations by suspending sentences and giving delinquent girls a chance to make good and make amends by good behavior for past

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220. *Id.*

221. *Id.* at 9.

222. *Id.* at 8 ("Behind almost every person upon whom sentence is passed there is someone else to whom that sentence is a matter of supreme importance."); see also Hon. Jack B. Weinstein, *The Effect of Sentencing on Women, Men, the Family, and the Community*, 5 COLUM. J. GENDER & L. 169 (1996).

223. *Our Woman Judge Saves Montreal Thief*, N.Y. TIMES, Jan. 13, 1921, at 3.

224. *Id.*

225. *Id.*

226. *N.Y. Woman Magistrate Is Making Record*, *supra* note 208.

227. See JENNIFER FRONC, *NEW YORK UNDERCOVER: PRIVATE SURVEILLANCE IN THE PROGRESSIVE ERA* 109–15 (2009); see also *New York Age*, in *ENCYCLOPEDIA OF THE HARLEM RENAISSANCE*, VOLUME 2, at 901–02 (Cary D. Wintz and Paul Finkelman, eds., 2004).

228. *N.Y. Woman Magistrate Is Making Record*, *supra* note 208.

misdeeds.”<sup>229</sup> A later article in the New York Age by a different reporter noted “there is nothing hard-boiled or masculine about Judge Norris, and her manner and tone were sympathetic to a large degree when speaking of the young colored girl, in whose welfare she shows a deep concern.”<sup>230</sup>

To be sure, some of this may have been contrived, strategic, and performative on Norris’s part. Since her Women Lawyers’ Club days, Norris had become even more adept at public relations and advancing intended narratives. For instance, the press would not have known about her lunch with the mothers of the immigrant youth unless Norris or her representatives told them. And, they were obviously invited to observe the entire encounter, including how together the three women quaintly waited for their soup to cool as “sisters pro tem.”<sup>231</sup>

In addition, some declared that Norris was unyielding in her cases. For instance, as has been frequently recounted,<sup>232</sup> African-American jazz singer, Billie Holiday, apparently appeared before Norris accused of prostitution while just a teenager.<sup>233</sup> At the time, Holiday was living at a brothel of sorts and admittedly having sex with men for money.<sup>234</sup> But, when Holiday turned away a powerful African-American gangster named “Big Blue Ranier,” he encouraged vice police to raid the house and arrest Holiday.<sup>235</sup> In an account of her initial appearance written many years after the fact, Holiday declared:

So they hauled me off to jail, not for something I did, but for something I wouldn’t do. . . . When I saw who was on the bench, I knew I was cooked. It was Magistrate Jean Hortense Norris, the first woman police judge in New York, a tough hard-faced old dame with hair bobbed almost like a man’s. . . . She had made a big name for herself, running around making sweet talk about how it took a woman to understand social problems. But I had heard from the girls who had been in her court that this was a lot of crud. She was tougher than any judge I ever

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229. *Id.*

230. Maybell McAdoo, *Woman Magistrate Advises Supervision of Harlem’s Dance Halls and Cabarets*, N.Y. AGE, April 11, 1925, at 3.

231. Brace, *supra* note 210, at 9.

232. See, e.g., Sara Ramshaw, *Improvising (Il)legality: Justice and the Irish Diaspora*, N.Y.C., 1930–32, 3 J. IRISH LEGAL STUD. 90, 111–13 (2013); BURTON PERETTI, NIGHTCLUB CITY: POLITICS AND AMUSEMENT IN MANHATTAN 128 (2007).

233. BILLIE HOLIDAY & WILLIAM DUFFY, LADY SINGS THE BLUES: 50TH ANNIVERSARY EDITION 28–32 (2006).

234. *Id.* at 24–25.

235. *Id.* at 26–27.



saw in pants before or since.<sup>236</sup>

Holiday's mother was called to court, lied about Billie's age so she would be treated as an adult, and Billie was then "sentenced" to time in a hospital for venereal disease evaluation and treatment.<sup>237</sup> However, a mere two weeks later, after getting into an altercation with another hospital resident at whom she took a "poke," Holiday was taken back to court.<sup>238</sup> This time Norris reportedly sentenced Holiday to four months at "Welfare Island."<sup>239</sup>

More recently, historian Cheryl Hicks also suggested that Norris targeted Black women in particular with toughness.<sup>240</sup> Hicks highlights the stories of both African-American social reformers and Black women defendants.<sup>241</sup> In doing so, she argues that Judge Norris was disconnected from both groups, showed special disdain for the Black women who appeared before her and improperly blamed the Black community for not doing enough to keep girls out of court.

For instance, Victoria Earle Matthews established and ran the White Rose Mission, a settlement house that assisted thousands of Black migrant women during the first part of the last century.<sup>242</sup> Grace Campbell served as a social worker for the National League for the Protection of Colored Women (NLPCW), later known as the Urban League, and as a private probation officer primarily in the City's General Sessions court up through about 1913.<sup>243</sup> In urging the Black community to show further support for African-American girls who appeared before her in the 1920s, Judge Norris declared "the colored girl lacks the right interest from her people both in and out the court."<sup>244</sup> In doing so, she failed to mention Matthews, Campbell, or their work. Hicks thus argues

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236. *Id.* at 27–28.

237. *Id.* at 28–29. According to Holiday, she had her mother tell the judge she was eighteen years old and not fifteen, fearful that otherwise she might be sent to a reformatory until she was twenty-one. *Id.* at 28. It seems Holiday had appeared in court before. *See id.* at 28–29.

238. *Id.* at 29–30.

239. *See* Ramshaw, *supra* note 232, at 111 n.153 (offering concerns about the authenticity and authorship of the Holiday account).

240. Hicks, *supra* note 7.

241. *Id.*

242. *Id.* at 31–37, 101–11.

243. *Id.* at 159–73. The General Sessions Court handled felony trial matters, unlike the Magistrate's Court, which handled only preliminary hearings in such cases and low-level quasi-criminal trials. *See* BRIAN DONOVAN, RESPECTABILITY ON TRIAL: SEX CRIMES IN NEW YORK, 1900–1918, at 33 (2016) (describing the "complicated bureaucratic and political maze" that existed within New York City's Magistrates' and Sessions Courts).

244. Hicks, *supra* note 7, at 176–77.

Norris had a “lack of contact with black New Yorkers,” lack of awareness of “the efforts that activists, settlement houses, social reform organizations, and churches were making in the Black community,” and “determin[ation] to remain uninformed.”<sup>245</sup>

But these claims, consistent with other condensed overviews of Norris’s judicial efforts, are not wholly supported by broader review of the record.<sup>246</sup> For instance, Hicks relies heavily on selected passages from just two articles in the *New York Age*. Norris is properly quoted as ungraciously calling upon “[c]olored people,” particularly affluent Blacks, to help establish more supportive housing options for African-American girls and cooperate more with social service agencies and the court itself.<sup>247</sup> But this telling overlooks the opinions of Fred Randolph Moore, Editor of the *New York Age* and a contemporary Black social activist who came to support Norris despite initial skepticism.<sup>248</sup> It further elides Norris’s other public remarks, warning that Black girls often were targeted by men, “taken advantage of” more than white girls at dance halls, and arrested at high rates.<sup>249</sup> Finally, it does not acknowledge Norris’s personal outreach to Harlem’s Black community over many years, as well as her ongoing work with Black probation staff in the courts.<sup>250</sup>

### C. *Harlem Outreach and Engagement with the Black Community*

Rather than cloistering herself in chambers to remain uninformed, as did many of her white male colleagues, in April 1925, Norris vowed to

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245. *Id.* at 175–77 (“Norris disregarded the work of black social workers and organizations that addressed the protection of black women.”).

246. *See, e.g.*, BLACKBURN, *supra* note 6, at 61–62 (Billie Holiday “had the misfortune of being tried by a woman magistrate called Jean Hortense Norris, who was notorious for giving harsh sentences in an effort to rid the streets of New York of what she called ‘wayward minors’.”); Harry Siegel, *Filthy Exploitation Picture Police Prey on Women from Billie Holiday to Baltimore*, N.Y. DAILY NEWS, (Aug. 14, 2016, 5:00 AM) <https://www.nydailynews.com/opinion/harry-siegel-filthy-exploitation-picture-article-1.2748978> [<https://perma.cc/4TFC-KS5J>] (Billie Holiday “appeared before Magistrate Jean Hortense Norris, then a feminist icon as New York’s first female judge, appointed ‘to temper justice with a woman’s mercy’ but in fact feared by women for her inevitable convictions and harsh sentences.”).

247. HICKS, *supra* note 7, at 175, 313 nn.75–76 (citing *N.Y. Woman Magistrate is Making Record*, N.Y. AGE, July 26, 1924 and Maybell McAdoo, *Woman Magistrate Advises Supervision of Harlem’s Dance Halls and Cabarets*, N.Y. AGE, April 11, 1925, at 3).

248. *See id.*

249. *Id.* This said, there is no question that Norris’ language was offensive and ill-chosen: “Your little colored girl likes to dance; she wants recreation. For some reason it seems she is not judged by the same standard of morals as others. She is taken advantage of.” *See* McAdoo, *supra* note 230.

250. *See infra* Section II.C and accompanying text.

“appear in person before any representative group of colored people selected by the Editor of the Age” to further demonstrate her commitments.<sup>251</sup> Thus, more than other judge at the time—and perhaps since—she expanded the role of the judge from the courtroom into the community, bringing a populist approach to her adjudication and sentencing practices. This also appeared to be another example of feminist legal realism in action, operating beyond the strict letter of the law to achieve goals and create fluidity in legal institutions and roles.<sup>252</sup>

For instance, in May 1925, Norris visited Public School 119 in Harlem to meet with the Parents’ Association of which Fred Moore was part.<sup>253</sup> During the gathering, she provided an overview of the operations of both Family Relations Court and Women’s Court for attendees.<sup>254</sup> She further noted the need for parents or other relatives to be present to facilitate release of girls back to the community from the Women’s Court and her intention to provide probation to first-time offenders.<sup>255</sup> Norris went on to share her dilemma that, at least as she saw it from her courtroom, numerous voluntary organizations offered assistance to “white first offenders” but there was “no such organization to care for the wayward colored girl” present in the Women’s Court.<sup>256</sup> The article made no mention of Moore or anyone else disputing this claim or recommending housing alternatives, like the White Rose Mission, to the judge.

Months before Norris’s visit to Public School 119, the New York Age flagged the lack of transitional and reentry housing options for court-involved “friendless colored girls.”<sup>257</sup> While voluntary groups like the Florence Crittenton Home and Waverly House were available to white girls, shamefully, they did not provide services to Black women.<sup>258</sup> The New York Age article did not directly address the injustice of segregated housing policies. Nor did it question the girls’ involvement in the courts in the first instance. Instead, it lifted up the work of an interracial group that had come together to try to ameliorate the situation through private fundraising. It included Norris’s soon-to-be-boss Chief

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251. McAdoo, *supra* note 230.

252. See generally, *Revisiting Anna Moscovitz Kross*, *supra* note 27.

253. See *Judge Jean Norris Tells of Experiences with Delinquent Girls in Women’s Court*, N.Y. AGE, May 2, 1925, at 3.

254. *Id.*

255. *Id.*

256. *Id.*

257. *To Establish a Modern Home for Colored Friendless Girls*, N.Y. AGE, Apr. 5, 1919, at 1.

258. *Id.*

Magistrate William McAdoo, white clergy members, and representatives from Black community groups like the Urban League, Circle for Negro War Relief, and New Age.<sup>259</sup> That is, perhaps in recognition of the unjust political realities of the day, the New Age advanced the imperfect solution of establishing a non-governmental organization to provide transitional housing for Black girls. Norris, it would seem, was simply joining such efforts to advance an existing realist approach to the unfortunate discriminatory status quo.<sup>260</sup>

Continuing with her outreach, in December 1925, Norris attended a meeting of the Clubmen's Beneficial League in Harlem to share word of the "friendless" Black girls she saw in her courtroom.<sup>261</sup> She described the youth as appearing alone and "without money or anyone to defend them."<sup>262</sup> During the meeting she acknowledged efforts of the Katy Ferguson House, a supportive housing facility for Black girls established at West 130th Street in Harlem in 1920 with private funds, including a small donation from W.E.B. DuBois, and for which Moore came to serve as secretary.<sup>263</sup> True, she failed to object directly to the concept of segregated housing for wayward youth. But in other settings, Norris did publicly criticize Katy Ferguson's overcrowding and focus on Black unwed mothers alone, which left many girls without a bed.<sup>264</sup> And her remarks before the Clubmen's League apparently drew a standing ovation from the crowd of Black male members.<sup>265</sup>

In July 1926, Norris appeared at the Bethel African Methodist Episcopal (A.M.E.) Church along with two Black probation officers from

259. *Id.*

260. *See Problem of Girl Workers*, N.Y. AGE, Apr. 18, 1925, at 4 (editorial piece critiquing Norris for overstating the wealth of the affluent in Harlem, but agreeing individual members of the Black community should come together to help build social services and housing options for indigent African American girls); *see also* Gregory Scott Parks, *Towards a Critical Race Realism*, 17 CORNELL J.L. & PUB. POL'Y 683 (2008); Christopher Bracey, *Legal Realism and the Race Question: Some Realism about Realism on Race Relations*, 108 HARV. L. REV. 1607 (1995).

261. *Judge Jean Norris Addresses Clubmen's Beneficial League*, N.Y. AGE, Dec. 26, 1925, at 1.

262. *Id.*

263. *See* Dot Richardson, *Home for Unwed Mothers: How Kitty Loses to 'Slick's' Technique*, N.Y. AGE, Jan. 20, 1951, at 4; *see also* Letter from Katy Ferguson-Sojourner Truth Board to W.E.B. DuBois, Jan. 27, 1926, U. MASS. AMHERST SPECIAL COLLECTIONS & UNIV. ARCHIVES, <http://credo.library.umass.edu/view/full/mums312-b033-i228> [<https://perma.cc/HD5U-8E3T>] (last visited Jan. 20, 2019) (note thanking DuBois for his two dollar donation on letterhead where Moore is listed as secretary); *Katy Ferguson: The Woman Who Loved All Children*, ONEHISTORY, <http://www.onehistory.org/katy.htm> [<https://perma.cc/YZW2-HNC5>] (last visited Jan. 20, 2019) (offering a brief history of the life of Katy Ferguson).

264. McAdoo, *supra* note 230.

265. *Judge Jean Norris Addresses Clubmen's Beneficial League*, *supra* note 261 ("A rising vote of thanks was given Judge Norris.").

the Family Relations Court, Captain Otto Steadman and Samuel Gibbs.<sup>266</sup> Norris declared the system needed more Black probation officers as well as social services volunteers.<sup>267</sup> As she further explained in another interview with the *New Age*, Steadman and Gibbs, men were supported in their Family Relations work by Mrs. Ethel Fraser, “the only colored woman probation officer” in that system.<sup>268</sup> Norris lauded Fraser’s “valuable” contributions but noted that she was overworked and maintained a very high caseload.<sup>269</sup>

Two weeks later Norris addressed Black women at the Empire State Federation of Women’s Clubs. She again asserted “color should play no role in helping girls,” but the reality was that Black girls were not being assisted as much as their white counterparts through official or unofficial means.<sup>270</sup> Therefore, she asked Black Club women to either volunteer, as she had done herself previously, or supplement the limited resources of the City’s courts like “the other races and various religions” were doing for girls in whom they had an interest.<sup>271</sup>

Here, Norris also claimed that she was not asking the women to do anything she would not do herself. She had already pulled funds together, she said, along with friends, to support one such “volunteer” probation worker. As written, it is not clear if the worker Norris helped to hire was a Black woman or not. It is also not clear who the friends were. However, later press coverage indicates Norris paid a Black social worker’s salary for over a year.<sup>272</sup>

The next year, believing Black girls still were not being provided with sufficient opportunities for a second chance once brought before the Women’s Court, Norris attended an April 1927 meeting with the Urban League. She “paid a special tribute to work of the Urban League” but went on to “particularly emphasiz[e] the need of a trained colored social worker” in her court to assist young Black women, many of whom had

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266. *Bethel Social League Hears Judge Jean Norris*, N.Y. AGE, July 3, 1926, at 7.

267. *Id.*

268. *Colored Woman Makes Splendid Record as Probation Officer*, N.Y. AGE, Dec. 13, 1924, at 10.

269. *Id.*

270. *Empire Federation Votes to Limit the Tenure of Office to Four Years—Mrs. Addie W. Hunton Reelected 2nd Term*, N.Y. AGE, July 17, 1926, at 3.

271. *Id.*

272. See Paul Harrison, *Woman is Needed to Study into Characters of Woman, Magistrate Norris Claims*, ELMIRA STAR-GAZETTE, Feb. 26, 1931, at 8 (“During a part-time assignment to Family Court, she found that many Negroes were without assistance of social workers. For 18 months she paid a Negro investigator, and finally persuaded Negro societies to assume the obligation.”).

moved to New York from the South and merely “drifted into bad company.”<sup>273</sup> The following month, Norris’s request was taken to the Urban League’s executive board for consideration.<sup>274</sup> The board, implicitly acknowledging its failure to provide support to girls in the Women’s Court, promised to present the matter to the Auxiliary subcommittee for further action.<sup>275</sup>

Thus, contrary to claims that Norris was “seemingly unaware of . . . the National Urban League’s fourteen-year commitment to training black social workers,”<sup>276</sup> it would appear she knew about those efforts and wanted girls in the Women’s Court and Family Relations Court to benefit from them. But it is unclear whether the Urban League acted on Norris’s request for assistance.<sup>277</sup>

This is not to say that Norris did enough during this time to address her own bias, race-based policing more generally, or, as will be discussed *infra*, the rampant injustice in her midst.<sup>278</sup> To be sure, as I have written elsewhere, many young women in New York City were aggressively policed for alleged sexual misconduct at the turn of the last century resulting in wrongful arrests in many quarters.<sup>279</sup> Sometimes these efforts were undertaken by racist law enforcement agents who made up stories about girls of color simply to make an arrest and generate kickbacks.<sup>280</sup> Many of these cases, as Hicks notes, were also rooted in false assumptions about Black girls as being especially sexual and dangerous.<sup>281</sup> But sometimes these efforts stemmed from misplaced protective efforts driven by Caucasian clergy and others who were interested in sweeping up immigrant girls who were constructed as “white,” to “save” them from a life of vice.<sup>282</sup> Thus, youth prosecution in Progressive Era New York City presents a complex landscape with regard to race, gender, and representation in the courts—much more so

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273. *Judge Norris is Guest of Harlem Women at Lunch*, N.Y. AGE, Apr. 16, 1927, at 2.

274. *Urban League Auxiliary Asked to Supply Woman Worker in Family Court*, N.Y. AGE, May 7, 1927, at 9.

275. *Id.*

276. HICKS, *supra* note 7, at 177.

277. Instead the Auxiliary’s “Spend a Night in Spain” Casino Ball fundraiser was later highlighted in the *New Age*. See Urban League’s “Spend a Night in Spain” Advertisement, N.Y. AGE, Nov. 12, 1927, at 6.

278. See *infra* Part III and accompanying text.

279. See *From Turkey Trot to Twitter*, *supra* note 50, at 72–73.

280. *Id.* at 73–74.

281. See, e.g., HICKS, *supra* note 7, at 117, 275.

282. See *From Turkey Trot to Twitter*, *supra* note 50, at 56–75 (discussing how “whiteness” is and was constructed and used during the Progressive Era to decide who was “worthy” of protection and possibly prosecution, particularly regarding girls and women).

than today where disproportionate arrest and prosecution of youth of color is undisputable.<sup>283</sup>

In addition, as Cheryl Hicks acknowledges, the government failed to provide many alternatives to incarceration and provided limited funds for probation staff or rehabilitative programs.<sup>284</sup> Thus, as with the provision of free legal services described above, community groups and voluntary social service organizations provided most rehabilitative programming.<sup>285</sup> It is outrageous that racism and discrimination permeated such entities resulting in most Black girls being rejected, sometimes under the guise of religious selectivity.<sup>286</sup> Unfortunately, however, it is hard to see how someone in Norris's position could have prohibited such practices. A low-level Magistrate Judge in a court of limited jurisdiction, she was without official power to unilaterally force voluntary agencies to change their segregationist policies or accept girls they did not wish to house.

Perhaps she could have turned away voluntary agencies from the court if they failed to accept all girls for placement, regardless of race, ethnicity, or background. But absent additional government funds, which were not forthcoming, Norris needed every volunteer agency and free bed that was afforded if she wanted to minimize incarcerative sentences. Thus, perhaps as a form of feminist legal realism that acknowledged the limits of her power, she accepted what the white-only Waverly House and other similar programs offered, and then desperately—if inartfully—sought additional support from the Black community for girls of color. Or perhaps these efforts were just another example of a troubling chasm between Norris's words and deeds.

#### *D. Popularity and Reputation as Compassionate Jurist*

In terms of ongoing coverage about her sentencing practices, it appears that throughout her second term on the bench, if anything, Norris continued to be seen as generally compassionate. In one case, a local lawyer accused her of being biased against his client, a police officer

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283. Compare *id.* at 73–75 with Candace Johnson & Mae C. Quinn, *Chaining Kids to the Ever-Turning Wheel: Other Contemporary Costs of Juvenile Court Involvement*, 73 WASH. & LEE L. REV. ONLINE 159 (2016).

284. HICKS, *supra* note 7, at 166 (recounting efforts of Black reformers to seek funding and call out “state’s responsibility to provide financial support for probation work.”).

285. See *id.*

286. See, e.g., *Need Money to Aid Girls*, N.Y. TIMES, Apr. 3, 1921, at 14 (recounting efforts of the New York Probation and Protection Association, a non-profit group, to raise money for the Waverly House).

charged with assaulting a twenty-eight-year-old “newsboy.”<sup>287</sup> The lawyer claimed that everyone knew Norris suspended sentences for newsboys or “newsies,” who were seen by others as a local nuisance.<sup>288</sup> In another case, reports circulated of Norris’s dismissal, after a preliminary hearing, of grand larceny charges where the defendant signed a bad check while drunk.<sup>289</sup> And in January 1930, she rejected charges against four of five defendants brought before her as part of a “wild-eyed” “Communist riot,” where 300 “Red Russia” protesters marched on City Hall.<sup>290</sup> After hearing the evidence at their arraignments, she dismissed the disorderly conduct charges against the adults—three of whom were women.<sup>291</sup> The last arrestee, because she was only fifteen, was remanded to the Children’s Society to be seen in the Children’s Court on the next day.<sup>292</sup>

These matters involved individuals who likely were considered “white.” But they also appeared to be unpopular outsiders disconnected from Tammany Hall and its Irish-Catholic leaders. Moreover, mainstream and Black press provided accounts of Norris showing similar compassion in the cases of individual women of color during this time—even when white reporters were not as kind. For instance, one article suggested deep concern on the part of Norris when faced with an unaccompanied Black girl. As described by the *New York Times*, “[a] negro girl of 16” appeared before the judge charged with larceny.<sup>293</sup> While Norris was not quoted as offering any disparaging commentary, the *New York Times* offered its own, as the press of the day too often did.<sup>294</sup> It noted the girl had a “half-vacant expression of the apparently subnormal mind.”<sup>295</sup> Rather than immediately focusing on the alleged crime, the judge asked, “Has the girl any parents?” Learning that she

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287. See *Woman Magistrate in Tilt with Lawyer; Tells Him She Doesn’t Like His Remark in Case of Policeman Accused of Striking Newsboy*, N.Y. TIMES, Oct. 25, 1927, at 60.

288. *Id.*; *Subway Guard Held in Newsboy Attack*, N.Y. TIMES, Oct. 27, 1927, at 22. See also Steve Thornton, *The Newsies Strike Back*, CONN. HIST., <https://connecticuthistory.org/the-newsies-strike-back> [https://perma.cc/GTK6-QC88 ] (last visited Jan. 12, 2019) (describing the plight of newsies during the Progressive Era, who were called a “nuisance” for blocking pedestrians and cars).

289. See, e.g., *Freed of Check Charge*, N.Y. TIMES, Oct. 25, 1927, at 60.

290. Frank Dolan, *200 Police Rout 300 Reds, Seize 3 Girls; Scores Hurt*, N.Y. DAILY NEWS, Jan. 26, 1930, at 3.

291. *Id.*

292. *Id.*

293. *First Woman Magistrate Judges Fallen Sisters*, *supra* note 203.

294. See, e.g., *New York’s First Woman Magistrate Mixes Justice with Common Sense*, *supra* note 210, at 59 (“[T]here passes before this woman judge a constant stream of wretched human beings reflecting the seamiest side of the life without . . .”).

295. *First Woman Magistrate Judges Fallen Sisters*, *supra* note 203.



did, Norris ordered her staff to have the parents summoned to court forthwith—apparently by way of a “special delivery” express mailing.<sup>296</sup> This account would appear to stand in contrast to Billie Holiday’s impressions.

On another day, a reporter witnessed Norris dealing with a group of African-American girls “all giving the good old names of Jones and Brown and Smith to start off the day.”<sup>297</sup> The girls, only about fifteen or sixteen years old, also initially misrepresented their ages.<sup>298</sup> That is, like Holiday, they claimed to be older than eighteen.<sup>299</sup> In the end, they came clean about their identities and admitted to the crimes charged.<sup>300</sup> If it was her first offense, Judge Norris referred the girl to probation and the Board of Health.<sup>301</sup> The older African-American women in the group, known to the court as repeat offenders, were sentenced to the hospital for treatment if needed, or the workhouse.<sup>302</sup> This was consistent with Norris’s publicly stated policy of treating all young, first time defendants with leniency but treating more harshly those who appeared to be recidivists.<sup>303</sup> To be sure, there was no mention of attorneys being appointed for the women or the presence of Church of the Ascension or Women Lawyers’ Association volunteers to speak up on their behalf. But this was a pre-existing norm in the quasi-criminal venue, regardless of who was presiding—male or female, particularly with Moscovitz Kross no longer running her Women’s Court volunteer defender group.

The New York Age further recounted, “In a recent case where two reputable colored women were arrested on trumped-up charges made by a police stool pigeon, merely to fatten some rookie officers’ record of arrests, [Norris] carefully investigated the charges and gave full weight to the character evidence produced in their behalf.”<sup>304</sup> It went on to note that in some other cases, when family members, volunteers, or social justice groups did not come forward to vouch for African-American girls at bail hearings, Norris “committed such cases into her own parole, thus

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296. *Id.*

297. Fay Stevenson, *New York’s Own Portia, Judge Norris, Is All Heart and Soul and Sympathy; Women Culprits Call Her a Just Friend*, EVENING WORLD (N.Y.), Nov. 11, 1919, at 3.

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.*

302. *Id.*

303. See, e.g., Jean H. Norris, *Methods of Dealing with Women Offenders*, 3 N.Y.U. L. REV. 31, 34–39 (1926); Espenscheid, *supra* note 47 (Norris describing her sentencing as individualized and concerned with prior records of defendants).

304. *Our City Magistrates*, *supra* note 57.

giving [the girls] a chance to establish their innocence.”<sup>305</sup>

Judge Norris likely could have used her discretion to toss out more cases against Black women, particularly if she believed police were selectively arresting girls of color without cause or sweeping them up in raids related to alcohol. And her failure to do so more frequently likely resulted in some Black girls being unfairly presented as repeat offenders in “need” of a harsher sentence than probation.<sup>306</sup> But the same probably could be said about the white girls who appeared before her. What is more, this expanded record demonstrates that Norris, while surely complicated, was not entirely disconnected from New York City’s Black community.<sup>307</sup> Nor did she appear to entirely lack compassion or consistently rule with a “fist of steel” as claimed by the Northrop brothers.<sup>308</sup>

### III. FALLEN WOMAN? THE SPECIAL COUNSEL’S INVESTIGATION AND PROSECUTION

#### *A. Dangerous Underworld Influences and Dark Times for the City’s Courts*

Indeed, when Norris was reappointed on July 1, 1930 to serve another ten years with a significant salary increase, no press outlet—minority owned or otherwise—offered criticism of Norris.<sup>309</sup> In contrast, New York newspapers were filled at the time with stories of governmental impropriety and graft running rampant in the courts. Organized criminals infiltrated City institutions under Tammany control. They moved mass quantities of liquor and money, promoted prostitution-related activities, and otherwise exploited the system.<sup>310</sup> And as the

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305. *Id.*

306. See HICKS, *supra* note 7, at 176 (arguing, “Norris’s blind eye to state funding for racially segregated religious and secular public institutions suggests that she believed black people’s problems stemmed from apathy rather than racism.”); see also *Negro Patient Challenges Dentist to Duel; Finds in Court He Faces Seven Years in Jail*, N.Y. TIMES, Aug. 6, 1928, at 21 (reporting on a case where Norris set \$5,000 bail for a black man based merely upon a written threat against a white male dentist).

307. HICKS, *supra* note 7, at 176.

308. PERETTI, *supra* note 6, at 129–30 (asserting that many believed Norris was driven by such Catholic moralist motivations, which drew Seabury’s personal ire and “brought out Protestants prejudices” more generally); NORTHRUP & NORTHRUP, *supra* note 1, at 81.

309. *Healy and Norris Begin New Terms as Magistrates*, BROOK. DAILY EAGLE, July 1, 1930, at 7 (reporting on Norris’ reappointment and \$12,000 salary).

310. See generally WALLACE, *supra* note 191 (describing the rise of organized crime and the fall of the honest government employee); see also MURTAGH & HARRIS, *supra* note 191, at 227–31.

Great Depression took hold,<sup>311</sup> many government officials found themselves—consensually or otherwise—drawn into shady financial dealings and the eye of a corruption storm.<sup>312</sup>

Fiorello LaGuardia, a law school classmate of Norris turned mayoral hopeful,<sup>313</sup> ran unsuccessfully in 1929 on an anti-corruption platform against Tammany-backed Jimmy Walker.<sup>314</sup> During his campaign, LaGuardia outed City Magistrate Albert Vitale for accepting a \$19,940 loan from one of the City's best-known gangsters and gambling ringleader, Arnold Rothstein.<sup>315</sup> Shortly thereafter, Rothstein wound up dead in his hotel room—a murder victim.<sup>316</sup> Around the same time, several alleged gangsters were arrested in connection with a bizarre staged robbery at Vitale's home that demonstrated his connection to the underworld.<sup>317</sup>

Another of Norris's colleagues, Magistrate Andrew Macrery was found dead as the result of a supposed heart attack.<sup>318</sup> However, rumors circulated that in fact he had been beaten to death for failing to pay to Mayor Walker \$30,000 for the pleasure of his appointment.<sup>319</sup> Magistrate George Ewald, resigned in 1930 amid accusations that he also paid thousands to secure Tammany's recommendation for his job.<sup>320</sup> Another judge, Joseph Force Crater of the state Supreme Court in New York City, simply disappeared when his activities became the subject of a corruption inquiry.<sup>321</sup>

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311. See ROBERT S. MCELVAINE, *THE GREAT DEPRESSION: AMERICA, 1929–1941*, at 46 (1993) (describing the “long, rolling downward slide” of the 1929 Wall Street Crash, that actually began earlier and contributed to the ongoing financial desperation and upheaval known as the Great Depression).

312. See CHRIS McNICKLE, *TO BE MAYOR OF NEW YORK: ETHNIC POLITICS IN THE CITY* 21, 33 (1993) (asserting that after Tammany boss Charles Murphy's death in 1924, “inept leaders rose to power,” they went “wild” with their involvement in underworld activities connected to alcohol and vice, and Democrats in office became vulnerable.).

313. See *Revisiting Anna Moscovitz Kross*, *supra* note 27, at 683.

314. MURTAGH & HARRIS, *supra* note 191, at 231–32.

315. *Rothstein Murder Plays Big Part in Mayoralty Drives*, *POST-CRESCENT* (Appleton, Wis.), Sept. 28, 1929, at 9.

316. *Id.*

317. *Vitale Guests Granted Writ; Hit ‘3d Degree’*, *BROOK. DAILY EAGLE*, Dec. 31, 1929, at 1. See also Peter Baida, *The Corrupting of New York City*, 38 *American Heritage* 1 (1986), <https://www.americanheritage.com/content/corrupting-new-york-city> [<https://perma.cc/L4GE-FW2X>] (describing Vitale's connections with criminals, which facilitated the return of the stolen items).

318. *Kin Denies Magistrate Was Beaten*, *STAR-GAZETTE* (Elmira, N.Y.), Sept. 12, 1929, at 10.

319. *Id.*

320. Paul Harrison, *Judicial Scandal Shakes Tammany*, *MIAMI DAILY NEWS-RECORD* (Miami, Okla.), Oct. 9, 1930, at 12.

321. *Id.*

Throughout all of this, Mayor Jimmy Walker was living a playboy's life, which included nights on the town, closets full of the finest clothes, and extravagant European trips.<sup>322</sup> LaGuardia, with his eyes on a future mayoral run, alleged Walker and his Tammany-backed colleagues were all benefiting from either gangland activities or payoffs for professional favors.<sup>323</sup> Specifically he asserted: "there is not a Tammany politician with the exception of Alfred E. Smith who can risk examination of his private bank account."<sup>324</sup>

Norris, on the other hand, appeared to be on the periphery of such matters. She continued her work in the Women's and Domestic Relations Parts without any specific complaints making their way to the press. Yet, by the end of 1930, fingers were pointed in every direction as multiple official investigations unfolded.<sup>325</sup> And Samuel Seabury—the same anti-Tammany judge who had ruled in favor of Jean Norris's teacher-mothers—was finally called upon to consolidate and lead the inquiries.<sup>326</sup>

Two years after Seabury ruled in favor of the teacher-mothers and lost his first bid for the Court of Appeals, he was ultimately successful in making it onto the state high court bench. He was barely forty-years old.<sup>327</sup> Yet, in an unusual move, the ambitious Seabury left his position on the Court after just two years to run for governor on the Democratic ticket.<sup>328</sup> His bid was unsuccessful, in part because support he counted on from Theodore Roosevelt did not come to fruition.<sup>329</sup> He thus

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322. See JOHN DEWEY, *New York and the Seabury Investigation*, in THE LATER WORKS OF JOHN DEWEY, 1925–1953, VOLUME 9: 1933–1934, at 364–65 (Jo Ann Boydston et al. eds., 1986) (recounting Walker's "conspicuous" associations as a "'good fellow' and 'wisecracking' man about town"); see also WALLACE, *supra* note 191, at 11–12 (describing Walker's suspicious support by publisher Paul Block).

323. See H. PAUL JEFFERS, THE NAPOLEON OF NEW YORK: MAYOR FIORELLO LA GUARDIA 135–36 (recounting LaGuardia's assertion, "I have charged the Walker-Tammany administration with specific acts of favoritism, racketeering, inefficiency, and waste—with a total disregard of the taxpayers' interests . . . Tammany cannot deny them.").

324. Baida, *supra* note 317.

325. *Judicial Scandal Shakes Tammany*, *supra* note 320.

326. Herbert Mitgang, *In Scandal of 1930's, City Shook and a Mayor Fell*, N.Y. TIMES, June 13, 1986, at 2; see also *Governor May Be Asked to Assist 150 Framed Women*, SAN BERNARDINO COUNTY SUN, Dec. 24, 1930, at 1.

327. Richland, *supra* note 110, at 182–83.

328. *Id.*; see also Judith S. Kaye, *Benjamin Nathan Cardozo*, HIST. SOC'Y OF THE N.Y. CTS., <http://www.nycourts.gov/history/legal-history-new-york/luminaries-court-appeals/cardozo-benjamin-feature.html> [https://perma.cc/TPM3-W9RG] (last visited Jan. 21, 2019) (recounting that Cardozo took Seabury's vacant Court of Appeals seat).

329. Richland, *supra* note 110, at 182; see also ROBERT WELDON WHALEN, MURDER, INC., AND THE MORAL LIFE: GANGSTERS AND GANGBUSTERS IN LA GUARDIA'S NEW YORK 80 (2016) (describing how Roosevelt changed course and threw his support behind Charles Whitman, a former

returned to private practice, and now, nearly sixty years of age, was presented with an official platform from which he could finally make his mark while advancing his views on morality and good government.<sup>330</sup>

In this way Seabury became one of the nation's first appointed "special counsel," with a role somewhat akin to Robert Mueller's today.<sup>331</sup> However, quite unlike the case of Mueller, New York's legislature, executive branch, and court system all worked together to create Seabury's wide-ranging and amorphous position by way of three anomalous and overlapping processes.<sup>332</sup> These historic efforts became known as "The Seabury Commission."

Among other things, Seabury advanced LaGuardia's claims about widespread kickbacks and patronage. Along with his lead investigator, attorney Isador Kresel, Seabury dove into the personal finances of all sitting Magistrate judges with Tammany connections.<sup>333</sup> For most, LaGuardia and Seabury's suspicions were correct. Magistrate Francis McQuade resigned on the spot when called to explain how he had deposited \$520,000 into his bank account over six years on a judge's salary.<sup>334</sup> Not far behind was Magistrate Henry Goodman, also a mysteriously wealthy man, who stepped down once publicly linked to Rothstein's activities.<sup>335</sup> Magistrate Abraham Rosenbluth, whose wife was summoned by Seabury's staff to discuss family finances and various

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city prosecutor).

330. Richland, *supra* note 110, at 183; *see also* NORTHROP & NORTHROP, *supra* note 1, at 12–16 (noting Seabury's 1873 birth and describing his background and career).

331. THE TWO NEW YORKS: STATE-CITY RELATIONS IN THE CHANGING FEDERAL SYSTEM 111–112 (Gerald Benjamin & Charles Brecher eds., 1988) (outlining the unique nature of Seabury's role).

332. *See* NEW YORK STATE SUPREME COURT, APPELLATE DIVISION, IN THE MATTER OF THE INVESTIGATION OF THE MAGISTRATES' COURTS IN THE FIRST JUDICIAL DEPARTMENT AND THE MAGISTRATES THEREOF, AND OF THE ATTORNEYS-AT-LAW PRACTICING IN SAID COURTS: FINAL REPORT OF SAMUEL SEABURY, REFEREE 225–29 (Arno Press 1974) (1932) [hereinafter FINAL REPORT OF SAMUEL SEABURY] (including as exhibits the ORDER APPOINTING REFEREE (Aug. 25, 1930) and the RESETTLED ORDER APPOINTING REFEREE (Sept. 23, 1930)); *see also* Chin, *supra* note 6, at vii (detailing and dating the three components to Seabury's appointment); *cf.* Neal Katyal, *President Trump is Wrong. The Mueller Probe is Constitutional*, TIME, June 7, 2018, <http://time.com/5304214/mueller-probe-constitutional/> [<https://perma.cc/N728-HLRK>]; Steven G. Calabresi, *Congress Has Not Created an Inferior Office of Special Counsel Since 1999 I* (July 11, 2018) (unpublished manuscript) (on file with Northwestern University Pritzker School of Law, Public Law and Legal Theory Series, No. 18-17), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3199143](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3199143) [<https://perma.cc/67FX-MGXB>] (claiming Robert Mueller's special counsel role is unconstitutional).

333. *See, e.g., Third Judge Involved in Court Probe*, ITHACA J., Dec. 27, 1930, at 1.

334. *Id.*

335. *Court's Reversal in Vice Case Hints Brooklyn Inquiry*, BROOK. DAILY EAGLE, Dec. 27, 1930, at 1 (describing Goodman as one of the two wealthiest sitting magistrates—the other was Louis Brodsky).

suddenly missing bank statements,<sup>336</sup> allegedly became ill and went on extended medical leave out of state until the dust settled.<sup>337</sup>

*B. Samuel Seabury and His Allegations of General Judicial Unfitness*

But Seabury apparently still could not connect Jean Norris, one of the four Magistrates sitting on the Woman's Court at the time—or her bank account—with Rothstein, organized crime, or political payoffs. Stories swirled that the four Women's Court judges were receiving hundreds of thousands of dollars in kickbacks.<sup>338</sup> In all of this Norris was not mentioned.

Finally, Seabury surfaced evidence that vice officers lied about countless Women's Court defendants,<sup>339</sup> prosecutors were paid to then dismiss the trumped-up prostitution charges,<sup>340</sup> and numerous private defense lawyers were involved in the scheme.<sup>341</sup> Informant Chile Acuna, a colorful “stool pigeon informer” used by police in prostitution and brothel cases, came forward to describe how police were lying on the stand on a regular basis.<sup>342</sup> His testimony undermined the reliability of the convictions in nearly 150 Women's Court matters, some from Norris's docket.<sup>343</sup> Thus, although he still did not have evidence that she was involved in any kind of bribery scheme, or knew the officers were lying, Seabury used Acuna's disclosures as a platform to move forward with charges against Jean Norris. He claimed amorphously that she abused her position of power and was “unfit” to serve as a jurist.<sup>344</sup>

By today's legal standards, it is impossible to imagine meaningfully defending against Seabury's accusations in proceedings that appeared to have no limits or bounds. First, although the Appellate Division, First

336. *Kresel Questions Mrs. Rosenbluth*, N.Y. TIMES, Oct. 21, 1930, at 14.

337. *Third Judge Involved in Court Probe*, *supra* note 333; *see also Seabury Studying Rosenbluth Case*, N.Y. TIMES, Jan. 4, 1932, at 44.

338. *Judge Shifted in Vice Probe*, PITT. POST-GAZETTE, Dec. 8, 1930, at 1 (“It was revealed today that Referee Samuel Seabury has received reports that large amounts of money in some instances as much as \$100,000, have been passing through the hands of two city magistrates [in the Women's Court] for several years”).

339. *Informer Confesses He “Framed” Women*, EVENING SUN (Balt.), Nov. 26, 1930, at 2; *Girls Admit Lies in N.Y. Vice Trial*, STAR TRIB. (Minneapolis), Dec. 18, 1930, at 4.

340. DEWEY, *supra* note 322, at 374–75 (recounting that Deputy District Attorney John Weston over the course of seven years accepted bribes to toss out approximately 600 Women's Court cases).

341. *Two Magistrates Face Hearing Today*, N.Y. TIMES, Feb. 13, 1931, at 10 (listing lawyers involved in bribery and misconduct around Women's Court matters).

342. *Governor May be Asked to Assist 150 Framed Women*, *supra* note 326, at 1.

343. *Id.*

344. *Woman ‘Liberal’ Judge Facing Ouster*, EXPRESS (Lock Haven, Pa.), June 12, 1931, at 8.

Department, had power under then-existing Article six, Section seventeen of the New York Constitution to permanently remove a sitting lower court judge “for cause,” it was not at all clear what that term meant.<sup>345</sup> Earlier and later court opinions admitted that neither the state’s Constitution nor statutory law provided a substantive definition or standard regarding “for cause” removal.<sup>346</sup> And while mere erroneous rulings or discretionary missteps supposedly were not grounds for ouster, appellate judges could remove sitting magistrates if they believed they were “unworthy” or lacked “judicial qualities.”<sup>347</sup> In this way, the generalized unfitness standard resembled the malleable “wayward” and vagrancy laws used to arrest and prosecute alleged sex workers in the Women’s Court.<sup>348</sup>

Seabury was merely directed to provide a report and recommendations with his opinions to the Appellate Division following whatever initial inquiries he thought appropriate. As noted by the New York Times at the time, Seabury was given “a free hand in his investigation of magistrates and magistrates’ courts, making him the sole judge of how far he shall go.”<sup>349</sup> He was thus largely left to make up—and orchestrate—the proceedings as he went along.<sup>350</sup> And many embraced the accusations made by Seabury, the former Court of Appeals justice, as gospel.

Seabury held countless hearings to gather facts from over 1,300 witnesses relating to a wide-range of City corruption claims—many behind closed doors; but many as a kind of public performance.<sup>351</sup>

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345. See N.Y. CONST. art. VI, § 17 (repealed 1961) (“Justice of the peace, . . . and judges or justices of inferior courts not of record, and their clerks, may be removed for cause, after due notice and an opportunity to be heard, by such courts as are or may be prescribed by law.”).

346. See, e.g., *In re Deuel*, 127 A.D. 640, 642–43 (N.Y. App. Div. 1908) (noting that in denying a petition for removal of a New York City Special Sessions judge, neither the Constitution nor any related statutes specify what would amount to “ground for removal”); *Kane v. Rudich*, 256 A.D. 586, 586–87 (N.Y. App. Div. 1939) (same).

347. See *In re Droege*, 129 A.D. 866, 882 (N.Y. App. Div. 1909).

348. See *From Turkey Trot to Twitter*, *supra* note 50, at 72–74.

349. *Seabury Gets Power to Sift Job-Buying*, N.Y. TIMES, Sept. 7, 1930, at 1.

350. See Paul Chevigny, *Review of New York City Police Corruption Investigation Commissions, 1894–1994*, 21 W. NEW ENG. L. REV. 233, 244 (1999) (commenting on Seabury’s expansive powers); see also *Three Women Key Figures of Vice Quiz*, STAR-GAZETTE (Elmira, N.Y.), Mar. 7, 1931, at 5 (noting that Governor Franklin D. Roosevelt originally only intended for Seabury to look into the propriety of practices in the Magistrate’s Court, not conduct a full-blown vice and corruption investigation into all City government operations); *Judge Marvin Cleared After Secret Inquiry*, BROOK. DAILY EAGLE, Feb. 22, 1931, at 1 (describing Governor Roosevelt’s shift to an “almost insistent plea” for investigation of individual City magistrates).

351. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 1–2; see also *Seabury Sifts Delay in Bronx Bribery Trials*, BROOK. DAILY EAGLE, June 21, 1931, at 2 (referring to Seabury as both “Chief Counsel” and “referee”).

Presumably these events were intended to serve as preliminary hearings to determine if there was sufficient evidence to allow individual misconduct charges to move forward. But Seabury served as both the “Chief Counsel” who personally interviewed witnesses, subpoenaed evidence, and hired many staff members to assist with the investigation,<sup>352</sup> and the referee or *de facto* judge who decided whether to believe the witnesses.

For instance, clearly wearing both hats, he personally and extensively cross-examined Norris at her public-hearing-cum-public-spectacle, over which he also presided as the fact-finder and where she apparently lacked representation.<sup>353</sup>

Seabury also refused to turn over his evidence in advance of Norris’s appearance before the public hearing, allowing him to expand his list of accusations in the midst of the proceedings, generate intrigue with the public, and generally engage in trial by ambush.<sup>354</sup> Perhaps all too reminiscent of her analysis of the prosecution of Christ, Norris found herself in a situation where standard rules of court procedure, including basic notice, were largely laid aside.

By the end of Seabury’s expansive preliminary hearing efforts, the specific claims against Norris were four-fold: (1) seeking to change official records in the case of an alleged sex worker, Mary DeSena-Labello, who allegedly was called to the stand by Norris to testify in her own case; (2) prejudicing the rights of another alleged sex worker, Minnie Landry, who Norris sentenced to 100 days in jail over the non-jail recommendation of the probation officer; (3) holding stock interests in a bail-bonds company that sometimes handled cases in her court; and (4) serving as a spokesperson in a Fleishman’s Yeast ad campaign for which she received \$1,000 payment while a judge.<sup>355</sup> However, a fifth catch-all claim was filed with the Court, asserting Norris’s general “severity,” “unjudicial conduct,” and otherwise “callous disregard of the rights of defendants in the Women’s Court” further merited her removal.<sup>356</sup> These were all set forth in a May 28, 1931 court filing.<sup>357</sup>

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352. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 1–5.

353. See, e.g., *Judge Norris Under Fire for Big Yeast ‘Fee’*, BROOK. DAILY EAGLE, Feb. 27, 1931, at 3 (noting that Seabury got into an argument with Norris while she answered questions); see also *Three Women Key Figures of Vice Quiz*, *supra* note 350 (describing work of Isidor Kresel, who himself became the target of a fraud investigation and indictment).

354. See *Two Magistrates Face Hearing Today*, *supra* note 341.

355. See *Seabury Asks Courts Disbar Kurtz, Kahan, 14 Other Attorneys*, BROOK. DAILY EAGLE, May 29, 1931, at 1 (outlining the four specific charges filed against Norris in Seabury’s second of three interim reports).

356. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 244 (including as an exhibit the



To provide further context for the broad discretion afforded Seabury in advancing these accusations, while Norris was faulted for allegedly being too harsh in women's prostitution cases and failing to discredit police officers more frequently,<sup>358</sup> her Women's Court colleague Magistrate Silbermann faced charges that he was too lenient in women's shoplifting cases and too frequently discounted the word of arresting officials.<sup>359</sup> Magistrate Louis Brodsky was also charged for supposedly ignoring police testimony and failing to convict enough gamblers.<sup>360</sup> Moreover, the individual counts against Norris were presented to the Appellate Division as part of a raft of corruption accusations and proposed "findings" against individuals at nearly every level of City government—most entirely disconnected from Norris herself.<sup>361</sup>

The interim report went even further, offering a range of recommendations for the days ahead.<sup>362</sup> These ran the gamut—from restructuring government operations to prevent undue influence from Tammany Hall, to making the Magistrates' system a traditional court of record with accurate transcription, to the creation of a more formal public defender system to provide counsel for all indigent accused persons in all courts.<sup>363</sup> In this way, the filing was more like a policy paper outlining suggested law reforms. Yet it also faulted Norris for failing to comply with Seabury's suggested best practices.<sup>364</sup>

Just five days after Seabury filed his interim report, Norris was called to show cause before the Appellate Division for a "trial" at which she was facing removal for "general unfitness."<sup>365</sup> Interestingly, Norris's trial was the second case against a sitting Magistrate that Seabury

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June 25, 1931 ORDER REMOVING JEAN H. NORRIS FROM THE OFFICE OF CITY MAGISTRATE OF THE CITY OF NEW YORK).

357. *Id.*; *Seabury Asks Courts Disbar Kurtz, Kahan, 14 Other Attorneys*, *supra* note 355; *see also Judge Norris Under Fire for Big Yeast 'Fee'*, *supra* note 353.

358. *See, e.g., Seabury to Demand Magistrates Norris and Silbermann Go*, N.Y. TIMES, May 20, 1931, at 1 (calling Norris's treatment of Labello the "chief item" of complaint against her); *see also Two Magistrates Face Hearing Today*, *supra* note 341 (accusing Norris of "severity in vice cases in which it was shown that she had convicted more women than any other magistrate").

359. *See Silbermann Kind to Shoplifters, Schurman Hints*, BROOK. DAILY EAGLE, Feb. 22, 1931, at 1; *see also Silbermann Again Under Fire in Probe*, BROOK. DAILY EAGLE, Feb. 20, 1931, at 2 (describing Seabury's central assertion against Silbermann—that he was too lenient towards accused lady shoplifters).

360. *Defiant Brodsky Battles for Office*, DAILY NEWS (N.Y.), Jan. 29, 1931, at 6.

361. *Seabury Asks Courts Disbar Kurtz, Kahan and 14 Other Attorneys*, *supra* note 355.

362. *Id.*

363. *Id.*; *see also FINAL REPORT OF SAMUEL SEABURY*, *supra* note 332, at 2, 10–15.

364. *Seabury Asks Courts Disbar Kurtz, Kahan and 14 Other Attorneys*, *supra* note 355; *see also Seabury to Demand Magistrates Norris and Silbermann Go*, *supra* note 358.

365. *Seabury Sends Out Subpoenas for City Clerks*, BROOK. DAILY EAGLE, June 4, 1931, at 2.

brought before the Appellate Division. Louis Brodsky's was the first to go. Brodsky, a previously little-known Magistrate, faced six counts of alleged misconduct beyond letting gamblers off the hook. These included making real estate and stock deals in exchange for his judgeship and opening financial accounts in the name of his secretary to hide patronage payoffs.<sup>366</sup> However, the Appellate Division, with one judge dissenting, found most of the charges against Brodsky were not supported by sufficient facts.<sup>367</sup> The remaining allegations, which appeared to be factually proven, did not satisfy the technical elements of "doing business" while a judge under the specific statute pled—even though they involved millions of dollars in real estate and stock transactions.<sup>368</sup> Moreover, since he was generally an "industrious, intelligent and satisfactory Magistrate" who worked closely with social workers at the court on behalf of defendants, the majority of the court believed he had no history warranting removal.<sup>369</sup> And in the end the Court of Appeals thanked all parties involved for dealing with the case with "cooperation" and without "undue rancor or bitterness."<sup>370</sup>

In contrast, despite her earlier wide-spread popularity, Norris's decision to contest the charges against her were not met with thanks, understanding, or sympathy—even from the Women Lawyers' Association she helped to found.<sup>371</sup> Whereas earlier favorable press accounts commented on Norris's authentic nature and feminine qualities, as she faced removal she was then depicted with "mannishness" and pretense.<sup>372</sup> Even her manner of speaking while testifying was mocked as "pseudo-Oxonian."<sup>373</sup> And the accusations against her became an indictment of women resisting traditional boundaries and involving themselves in law more generally. As one newspaper recounted,

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366. See FINAL REPORT OF SAMUEL SEABURY, note 325, at 230–37 (including as an exhibit the Jan. 5, 1931 OPINION IN THE MATTER OF LOUIS B. BRODSKY and the September 23, 1930 ORDER IN THE MATTER OF LOUIS B. BRODSKY).

367. *Id.*

368. *Id.* at 231.

369. *Id.*

370. *Id.* at 233; see also *Defiant Brodsky Battles for Office*, *supra* note 360.

371. See MURTAGH & HARRIS, *supra* note 191, at 232–37 ("public opinion was with Seabury," who initially "declared that the whole Magistrates' Court system was 'a mere medium for political patronage'"); see also *Court's Reversal in Vice Case Hints Brooklyn Inquiry*, BROOK. DAILY EAGLE, Dec. 27, 1930, at 2 (describing support for Seabury's court investigation work among bar association and women's groups across the City).

372. PERETTI, *supra* note 6, at 129 (quoting one of Norris's critics, journalist Walter Chambers).

373. See, e.g., *A Woman's Turn*, TIME MAG., Feb. 23, 1931, at 14.

Having basked since 1919 in the warmth of public approval and hearty endorsement of welfare organizations, the first New York woman to ever wear the black silk gown of a magistrate is amazed that her own conduct now is cited in the revival of the question of the suitability of women judges to handle women's cases.<sup>374</sup>

Norris, permitted counsel at her appellate court trial, was represented by attorney Martin Conboy, a well-respected lawyer from Democratic party circles.<sup>375</sup> But here, too, the ad hoc procedures allowed Seabury an unfair advantage. For instance, although Norris had only been given notice of the charges described above and provided a written response through her attorney,<sup>376</sup> at trial Seabury was permitted to present a range of additional charged and uncharged allegations.<sup>377</sup>

In addition, Seabury modified his claims relating to the DeSena case. He went from accusing Norris of editing a transcript to hide the fact that she implicitly compelled DeSena to testify—to presenting further shocking evidence that Norris supposedly physically coerced DeSena, and lied about it at her preliminary public hearing.<sup>378</sup> Seabury called DeSena's defense attorney, Peter L.F. Sabbatino to testify that Norris ordered DeSena to be physically dragged, screaming, to the witness chair to force her to testify, and then sentenced her to 100 days' confinement.<sup>379</sup>

Seabury also put on evidence relating to the case of a woman named Bodner. Her matter was part of the preliminary public hearing record but was not listed among the formal charges before the Court at trial. Yet Seabury argued Norris failed to provide Bodner with her right to counsel.<sup>380</sup> He also made himself a witness, for instance by opining on how he would have appointed attorneys for defendants in the Women's Court if he was a judge there.<sup>381</sup> Thus, although Norris was the one

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374. Paul Harrison, *Woman Is Needed to Study into Characters of Woman, Magistrate Norris Claims*, ELMIRA STAR-GAZETTE, Feb. 26, 1931, at 8.

375. See *Jean H. Norris Put on Trial as Unfit for Bench*, BROOK. DAILY EAGLE, June 22, 1931, at 1; see also *Open Luce Headquarters*, N.Y. TIMES, Oct. 10, 1919, at 12 (reporting that Conboy served as Chairman and Norris Vice Chairman of the Democratic committee advancing Robert Luce's New York Supreme Court appointment); *Martin Conboy, 65, Noted Lawyer, Dies*, N.Y. TIMES, Mar. 6, 1944, at 19 (describing Conboy's legal career).

376. *Seabury Sends Out Subpoenas for City Clerks*, BROOK. DAILY EAGLE, June 4, 1931, at 2.

377. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 239–41 (including Seabury's allegations "not made on the basis of a separate charge" that was heard by the Court).

378. *Id.*

379. *Jean H. Norris Put on Trial as Unfit for Bench*, *supra* note 375.

380. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 240, 247.

381. *Judge Norris Is Ousted; Court Convicts Her on 4 Misconduct Charges*, BROOK. DAILY EAGLE, June 25, 1931, at 1 [hereinafter *Judge Norris Is Ousted*].

accused of prejudicing litigants, Seabury took the very same liberties that he alleged to be improper in Norris's courtroom.

Beyond taking the stand herself, Norris called a police officer who had been present during the DeSena trial and presented character testimony from Robert Luce, a former Supreme Court judge she supported in her Tammany work.<sup>382</sup> But notably, neither Anna Moscovitz Kross, who by this time left the Office of Corporation Counsel for private practice,<sup>383</sup> nor any of Norris's other Women Lawyers' Association colleagues joined Luce to speak to Norris's character. The Women Lawyers' Journal did include some stories around the time of Norris's trial suggesting women lawyers were being held to higher ethical standards than their male counterparts and were facing efforts to divide and conquer their leaders.<sup>384</sup> But, Norris was left largely on her own by her sisters in law who did not try to protect her from the fall.<sup>385</sup>

### C. Norris's Removal from the Bench and Fall

In the end, the Appellate Division unanimously sided with Seabury. After deliberating for an hour, it declared Norris guilty of five charges and ordered her removed from the bench.<sup>386</sup> Specifically, the Court found Norris guilty of two counts based upon her alleged hand-written amendments to transcripts in the DeSena and Landry cases in a manner intended to negatively impact their right to succeed on appeal. Two

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382. See *Dragging Girl Denied at Trial by Jean Norris*, BROOK. DAILY EAGLE, June 24, 1931, at 2.

383. *Revisiting Anna Moscovitz Kross*, *supra* note 27, at 682.

384. See, e.g., Rosaline Goodrich Bates, *Loyalty and the Woman Lawyer*, 19 WOMEN LAW. J. 29, 29 (1932) (asking the membership: "Is the present depression going to cut down the ranks of women in the professions? Are we allowing our women leaders to fall unaided before an organized attack?"); Marion Gold Lewis, *Minutes of the National Association of Women Lawyers*, *Atlantic City*, 19 WOMEN LAW. J. 10, 10 (1931) ("The speaker stressed the fact that the ethics of women are similar to those required of the men, only three times more strict.").

385. One press account mentions only one woman passing notes to Norris during the trial as an apparent show of support, while other women were present to watch the proceedings—not unlike the way onlookers used to attend Women's Court session as a kind of performance and spectacle. See *Jean H. Norris Goes to Trial*, BROOK. DAILY EAGLE, June 22, 1931, at 2; see also *Judge Norris Is Ousted*, *supra* note 381 (recounting that at the end of trial, Norris exited the courthouse with her attorney alone, while Seabury was followed by a cheering crowd).

386. Compare *First Woman Judge in New York is Found Unfit*, BINGHAMTON PRESS & SUN-BULL., June 25, 1931, at 1 (reporting the Court made findings on four of the five counts before it) with *Judge Norris Is Ousted*, *supra* note 381 (suggesting the Court had only four counts properly before it; quoting Presiding Justice Finch as finding by a preponderance of the evidence that DeSena had been dragged to the witness stand but noting it was not among the "specifications" before the Court).

others related to her financial dealings—receiving \$1,000 for the yeast ad and holding some unknown amount of stock in a bonding company that sometimes worked in the Women’s Court.<sup>387</sup>

The final finding related to the Bodmer matter. The Court held that Norris placed the

twenty year old girl on trial summarily upon her arrest, without a warrant and without counsel or the opportunity to obtain counsel, and convicted her without advising her of her rights and on testimony which was obviously insufficient in law and almost exclusively hearsay. The constitutional rights of defendant were thus violated in an inexcusable manner.<sup>388</sup>

Thus, contrary to suggestions of detractors like the Northrop brothers, the Appellate Division did not find Norris was generally callous and disrespectful towards broad swaths of women defendants who came before her.<sup>389</sup> And despite whatever sweeping assertions may have been made in Seabury’s lengthy preliminary reports to the Court, it did not determine that Norris punished women more harshly than her male colleagues, imposed unduly harsh sentences in countless cases, or disproportionately sentenced Black women to jail time.<sup>390</sup> In fact, the race of the Bodmer and DeSena women was not mentioned. Given norms of the day where whiteness was generally assumed absent disclaimer, this likely meant they were not women of color. In these ways, Norris was not unlike many of the women defendants who came before her on false charges brought by police, who earned reputations as wayward and fallen women irrespective of the actual facts.

Indeed, claims by modern commentators such as Burton Peretti, who Cheryl Hicks relies upon in her work, are puzzling. Peretti asserts Norris handed down “40 percent more convictions than her peers,” disproportionately impacted Black women accused of prostitution.<sup>391</sup> The sources for these claims are somewhat unclear. Seabury apparently presented evidence that in 1930, Norris convicted 86% of the women defendants who appeared before her in the Women’s Court, while her three male colleagues had conviction rates of 84%, 79%, and 68%,

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387. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 238–48; *see also* DEWEY, *supra* note 322, at 355 (“It should be remembered . . . that many of the persons whom [Seabury] accuses in his reports have not been convicted by a jury, nor have the facts been proven in a court of law.”).

388. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 240.

389. *See Women Lawyers Defend Sex in Norris Ouster*, *supra* note 9.

390. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 238–48.

391. *See* PERETTI, *supra* note 6, at 127–29; *see also* HICKS, *supra* note 7, at 178 n.96 (citing PERETTI).

respectively.<sup>392</sup>

But Norris had 818 women defendants assigned to her during this time while the men had dockets ranging from only 614 to 202 cases.<sup>393</sup> And Seabury accused the other Women's Court officials—not Norris—of being involved in a bribery and kickback schemes where they were being paid to toss cases.<sup>394</sup> Thus, it would make sense that Norris had higher conviction rates. Moreover, the Appellate Division made no specific findings relating to these percentages, which were likely compiled by Seabury's first assistant, Isador Kresel, who by this time had been indicted himself for fraud and financial wrongdoing.<sup>395</sup> And the conviction rate does not inherently suggest bias against women defendants in any event.<sup>396</sup>

What is more, scholars have pointed out that white women were the predominant defendant population in the Women's Court up through 1931 or 1932.<sup>397</sup> That ratio did reverse itself—so that there were twice as many Black women before the court as white women.<sup>398</sup> But that was only after Norris was removed from the bench. Indeed, as described in 1957 by John Murtagh, a former presiding judge in New York's Magistrate's system, and his co-author Sara Harris, "In 1932, only one year after the Seabury exposé, the police resumed their program of wholesale arrests. Now, however, there was special emphasis on bringing in Negro streetwalkers. Whereas in 1929 there were two white women arrested to one Negro woman, these figures were now reversed."<sup>399</sup>

Independent review of a random sampling of Women's Court docket

392. See *Jean Norris Plays Traitor to Girls Trapped by Sex*, N.Y. DAILY NEWS, Feb. 15, 1931, at 3.

393. *Id.*

394. See, e.g., *Judge Norris Is Ousted*, *supra* note 381 (noting that Judge Jesse Silbermann "rotated with Magistrate Norris on the Women's Court Bench" and was "charged by Referee Seabury with allowing politicians to fix cases before him").

395. *Indict Kresel and 7 in Bank Crash*, BROOK. DAILY EAGLE, Feb. 10, 1931, at 1 (reporting that a felony indictment was delivered against Isador Kresel, "the moving spirit of the magistrates courts investigation," and that Seabury had no comment).

396. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 238–48; see also Mark Flatten, *City Court: Money, Pressure and Politics Make it Tough to Beat the Rap*, GOLDWATER INST., (July 17, 2017) <https://goldwaterinstitute.org/article/city-court-money-pressure-and-politics-make-it-tough-to-beat-the-rap/> [https://perma.cc/6N3K-2CW7] (lamenting that little has changed over many decades in Arizona's low-level local courts, where the overall conviction rate is 83%).

397. See Stephen Robertson, *Harlem Undercover: Vice, Race, and Prostitution, 1910–1930*, 35 J. URB. HIST. 485, 504 n.83 (2009) (describing a shift in arrest and prosecution rates and noting that "In 1932, 497 white women and 928 black women were charged with prostitution.").

398. *Id.* at 499.

399. MURTAGH & HARRIS, *supra* note 191, at 237.

sheets during Norris's tenure confirms the vast majority of women she sentenced, or for whom she imposed bail, were "white" and not women of color.<sup>400</sup> In addition, the sampling of reviewed sentences did not clearly reflect racial disparities or demonstrate unusual patterns against women of any race.<sup>401</sup> Moreover, they seemed relatively consistent with those imposed by other judges in the Women's Court.<sup>402</sup> In short, they appeared to be lawful sentences.

Thus, Norris's removal appeared to be rooted in amorphous legal standards, where her failure to meet invisible expectations as a woman jurist resulted in sanction. Not only was existing law devoid of a clear definition for judicial "unfitness," but the Appellate Division failed to indicate what standard was applied in Norris's particular case. For instance, it did not indicate who had the ultimate burden of persuasion or what quantum of proof was needed to prevail. And unlike its opinion in Magistrate Brodsky's case, for Norris the court failed to cite to any statutes or judicial ethics requirements or even name the specific constitutional provisions that had allegedly been violated in the Bodmer matter.<sup>403</sup>

Moreover, it appears Norris was expected to provide different legal

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400. Using the microfiche records of the New York City Municipal Archives, this author randomly pulled and reviewed docket sheets from ten different days over the course of Norris's tenure on the Women's Court bench. "White" defendants were designated on the docket sheets by way of the letter "w"; Black defendants had the letter "b" next to their names. This provided for a sampling of 150 cases total. Fewer than 20 such cases involved Black women defendants.

401. See *supra* note 397 and accompanying text. Most of the cases involved "wayward minor" allegations or "vagrancy" charges, both generally brought against alleged sex workers, which were resolved at the initial appearance. "Larceny" (theft) charges, also frequently filed by prosecutors, were generally bound over for further proceedings. The records provide an overall impression of individualized sentencing determinations in each case. Over the years, Norris dismissed several wayward minor and vagrancy cases following trial or presentation of evidence, including at least two cases against African-American defendants.

402. Norris's sentences on prostitution-related cases ranged from a fine, to probation, to hospitalization, to short and long jail terms. In a number of cases—for both Black and white women defendants—Norris imposed 100-day workhouse terms. The latter appeared to be imposed on older defendants, who likely were repeat offenders. Most of the larceny matters were met with the imposition of \$500 bail, regardless of the race of the defendant. A non-scientific comparison of Norris's docket sheets to a random sampling of the dockets of male jurists in the Women's Court did not surface any apparent strong differences in practices or disparities.

403. Indeed, it is unclear whether New York State had embraced the American Bar Association's Canon of Judicial Ethics, which had only been promulgated a few years before. See Hon. Judith Kaye, *Safeguarding a Crown Jewel: Judicial Independence and Lawyer Criticism of Courts*, 25 HOFSTRA L. REV. 703, 712 n.32 (1997) (describing the American Bar Association's 1924 Canon of Judicial Ethics and New York state's later adoption of its judicial conduct rules by way of statute); see also Bruce Green & Rebecca Roiphe, *Regulating Discourtesy on the Bench: A Study in the Evolution of Judicial Independence*, 64 N.Y.U. ANN. SURV. AM. L. 497, 514–15 (2009); Susan D. Carle, *Lawyers' Duty to Do Justice: A New Look at the History of the 1908 Canons*, 24 L. & SOC. INQUIRY 1, 6–7 (1999).

protections in her courtroom than those required by law—or that had been provided for years by her male colleagues. First, as noted, the Magistrates' Court was not considered a formal court of record.<sup>404</sup> And, as Seabury's own recommendations to the Appellate Court made clear that existing rules around transcripts in the Magistrates' system were loose, at best.<sup>405</sup> In addition, most federal constitutional protections for criminal defendants had not yet been applied to state court proceedings through the Fourteenth Amendment's incorporation doctrine. This included both the right against self-incrimination, as well as to court-appointed counsel. Indeed, it would be several decades before the United States Supreme Court held that state misdemeanants were entitled to both such protections.<sup>406</sup>

New York did provide criminal defendants with some legal protections beyond those mandated under the federal Constitution. But it surely did not ensure all defendants—even those in a City magistrate court with its ambiguous civil-criminal designation—had an absolute constitutional right to free counsel if indigent.<sup>407</sup> Indeed, throughout her career, Norris was quick to note that the Women's Court and Domestic Relations courtrooms where she sat primarily were not considered criminal courts at all, even though jail sentences could be imposed in some cases.<sup>408</sup> And for years the venue was run in an informal and ad hoc manner.

Obviously, discussions about what kind of representation was allowed or available in the City's courts were still ongoing and deeply contested. Even Seabury apparently recognized there was no legal right to free counsel in all prosecutions, given his suggestion of an expanded public defender system for all City courts as a best practice. No judge had previously been removed for such conduct.<sup>409</sup> And the failure to

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404. See *supra* note 401 and accompanying text.

405. FINAL REPORT OF SAMUEL SEABURY, *supra* note 332, at 215.

406. *Malloy v. Hogan*, 378 U.S. 1, 11 (1964) (right against compelled self-incrimination extended to state court prosecution cases); *Argersinger v. Hamlin*, 407 U.S. 25, 45–46 (1972) (right to appointed counsel in case where indigent defendant faces possibility of incarceration for misdemeanor offense).

407. See *supra* note 401 and accompanying text.

408. See, e.g., *Woman Jurist Girdling Globe to Study Courts*, HONOLULU STAR BULL., May 7, 1923, at 4.

409. Gerald Stern, *Judicial Error that Is Subject to Discipline in New York*, 32 HOFSTRA L. REV. 1547, 1550 (2004) [hereinafter *Judicial Error*] (beyond Jean Norris's case, "[t]here are no other reported cases before the establishment of the Commission on Judicial Conduct of judges being removed from office for violating the rights of defendants"); Stern, *supra* note 6, at 322 ("For most of the past ten decades, arbitrary conduct in court that deprived litigants or other persons of their guaranteed rights, with few exceptions, had not been a basis for discipline.").



inform a single defendant of their right to hire a lawyer, while surely problematic, under current standards would likely result in a new trial being ordered. It is hard to imagine a judge being removed from the bench for such conduct today.<sup>410</sup>

Similarly, Norris's involvement in an advertisement campaign for Fleishman's Yeast as a sleep aid—where her photograph appeared with a quote about using yeast to overcome work-related insomnia—to earn \$1,000 was surely injudicious. And holding a small number of stock shares in a bail-bonds surety company for a year while working with Women's Court defendants was, no doubt, unseemly. But under then existing judicial norms, it is not at all apparent that her actions were prohibited—much less so improper that they mandated removal.<sup>411</sup> Rather, as a woman who dared to cross the gendered divide into the world of legal leadership, challenge existing norms for sex-based behaviors and work, and publicly embraced her power, it appears her removal and complete fall from grace was the price she was required to pay—and perhaps a forgone conclusion from the start given the treacherous hazards she faced in the profession.

In the months to come, Norris was also talked about in the same breath as Mayor Jimmy Walker.<sup>412</sup> But Seabury indisputably proved Walker received large sums of money from gangsters and wealthy businessmen.<sup>413</sup> In fact, Walker resigned in the middle of his hearings after testifying for two days.<sup>414</sup> The evidence clearly demonstrated patrons set up a sizeable slush fund for him in numerous bank accounts,

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410. See *Judicial Error*, *supra* note 409, at 1550, 1552 (noting that up until 1968, New York "courts were reluctant to discipline judges" even when they had violated defendants' rights, thereafter only removed judges only based upon "repeated errors of established law, if serious enough," and instead issued censures or admonitions to judges in such cases).

411. See *Judge Norris Is Ousted*, *supra* note 381 ("The decision of the court cannot be appealed."); see also *In re Droege*, 197 N.Y. 44, 48–49 (N.Y. Ct. App. 1909) (determining that Court of Appeals was without power to review removal of a judge under Article VI, Section 17 of the New York Constitution); *Sarisohn v. Appellate Division of Supreme Court, Second Judicial Dep't*, 21 N.Y.2d 36, 48 (N.Y. Ct. App. 1967) (recognizing change in the law now allowing for New York City magistrate judges to appeal removal determinations to the state's high court) *cert. denied*, 393 U.S. 1116 (1969).

412. She was also publicly scorned by many of her sisters in law—including a group of 600 who wrote to offer their condemnation of her actions as not representative of the fairer sex. *Women Lawyers Defend Sex in Norris Ouster*, *supra* note 9 (post-trial statement by women attorneys denouncing Norris).

413. See, e.g., *Seven Years of Ragtime Featured Career of Mayor Walker at City Hall*, BROOK. DAILY EAGLE, Sept. 2, 1932, at 6 (talking about corruption in the police department, the "venal Vice Squad," and "wholesale 'framing' of women," while describing Norris's removal from office along with other City officials).

414. LOUIS J. GRIBETZ & JOSEPH KAYE, *JIMMIE WALKER: THE STORY OF A PERSONALITY* 312–13 (1932).

Tammany and gangsters were supporting his exotic vacations, and he was likely laundering dirty money during his international trips.<sup>415</sup>

Walker still managed to land on his feet, even receiving a regulatory appointment from his nemesis—Fiorello LaGuardia—once LaGuardia became mayor.<sup>416</sup> After her removal, Norris largely fell into obscurity other than one blip of further fanfare about her 1933 efforts to sue a playwright for alleged libel.<sup>417</sup> Although it did not name Norris, the Broadway play, “Four O’Clock,” included reference to a judge about whom characters said things like, “she framed me,” “she is a good fixer,” and “she got enough graft to help you.”<sup>418</sup>

Norris’s lawsuit for damage to her reputation was apparently unsuccessful. But it was clear she had already lost in the court of popular opinion. For the rest of her life, despite the lack of such evidence at her trial, most assumed Norris had received bribes for her judicial work, in addition to treating women harshly and without compassion. Judge Jean Hortense Norris died in 1955 without so much as an obituary in any New York newspaper.<sup>419</sup>

#### CONCLUSION

The remarkable legal career of Judge Jean Hortense Norris presents a captivating and complex picture that cannot be summed up—or disregarded—by the term “fallen woman.” One of the first woman law school graduates in New York and practicing women attorneys in the City, she seemed to explode onto the scene from out of nowhere following her 1912 graduation from New York University Law School with a second law degree as an older student but early widow.

From the start of her legal career she was a leader, helping launch both the Women Lawyers’ Club and its Law Journal, rising in the ranks

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415. See *Seven Years of Ragtime Featured Career of Mayor Walker at City Hall*, *supra* note 413 (reporting on Seabury’s cross examination of Walker about numerous trips taken out of the country and suggestion that Walker used the trips to move and launder money); see also CAROLYN SAYLER, *DORIS FLEESON: INCOMPARABLY THE FIRST POLITICAL JOURNALIST OF HER TIME* 60 (2010) (describing testimony during the Seabury hearings that New York businessmen set up an account for Walker and deposited at least \$246,000 for his benefit, while Walker kept a private safe in his home where he stored untold amounts of cash).

416. See MARY STOLBERG, *FIGHTING ORGANIZED CRIME: POLITICS, JUSTICE, AND THE LEGACY OF THOMAS E. DEWEY* 258 (“[Walker] remained a popular figure” who LaGuardia appointed to serve as Chairperson of the National Cloak and Suit industry).

417. *Producers of Play Sued by Jean Norris*, N.Y. TIMES, Feb. 19, 1933, at 25.

418. *Id.*

419. The Association of Women Lawyers did provide a very brief announcement in its magazine. See *Requiescat in Pace*, 41 WOMEN LAW. J., 9, 9 (1955).

within the organization and publication, and working to advance the well-being of women through both her legislative advocacy and direct representation work. But even during this period, Norris was a complicated and multi-faceted character who straddled different worlds and personas. This flexibility, a kind of feminist legal realism in action, may have both helped and hurt her during her career.

For instance, she aligned herself with controversial women's rights issues of the day, like the teacher-mother cases, and somewhat radical groups and causes, such as Henrietta Rodman and the free-loving, lesbian-laden Heterodoxy Club. Yet, she took a somewhat muted and middle-of-the-road tone in her advocacy work and embraced a range of traditional viewpoints regarding women and their roles.

Similarly, while providing free representation to alleged prostitutes in New York City's Women's Court, she publicly claimed a woman lawyer's place was not at counsel table but instead working on behalf of women and children through more informal and less litigious means—such as drafting proposed legislation or lobbying Congress.

Norris's efforts to straddle these divides and meet the wants of different audiences—sometimes taking inconsistent positions or offering a somewhat constructed façade as a result—in some ways helped her achieve success. But it also left her without a firm identity or camp of firm supporters.

Indeed, her Women Lawyers' Club colleagues vocally urged the appointment of a woman to the Night Court's bench to fairly deal with alleged sex workers, many of whom the Club believed were being framed. They were all passed over for the job. Norris remained remarkably quiet during public disputes about the Women's Court. She also slyly switched political allegiance to become a Democratic party leader, in the end getting herself appointed by the Tammany Hall mayor not only as the first female jurist in New York—but specially overseeing the Women's Court. But such shrewdness as a woman may have made her vulnerable to attack, as later events suggest.

During her time on the bench, Norris confronted gender stereotypes and a strong initial presumption of incompetence. But through her seemingly compassionate sentencing approaches for first time offenders and accountability measures for recidivists—coupled with some masterful messaging—she managed to win hearts and minds not just in the City of New York, but across the country and beyond. International, national, and local press outlets favorably covered Norris's Women's Court work and Domestic Relations docket. Even New York City's Black-owned newspaper, the *New York Age*, run by a prominent

African-American activist, sang Norris's praises.

In fact, contrary to recent claims—and quite different from her male colleagues—Judge Norris regularly engaged with members of the African-American community through repeated trips to Harlem, holding community meetings, and reporting that Black girls were frequently targeted by police and brought before the court with no legal counsel or family support. In addition, at least in some reported cases, it appeared that Norris went out of her way to treat young women of color with dignity, even when the press was not as kind, and dismissed charges where they appeared to be trumped up.

But, here again, this may be another example of Norris's chameleon-like nature. Because, of course, while she did support the Heterodoxy Club—open to all women regardless of race—her Women Lawyers' Club was clearly a white-only organization and its journal was silent about the special concerns of women of color. Whether this was by discriminatory design or failure to actively challenge norms of the day, it is clear Norris—like most of her peers—played a role in the continuing marginalization of minority women attorneys.

This said, the Seabury Commission, given its own bias, surely did not focus on any alleged racial animus on the part of Norris. Rather, it tried to paint her as exceedingly harsh toward all women, regardless of race. This blanket claim—despite all prior public sentiment to the contrary—was the best Seabury could muster after failing to find any evidence that Norris, like her male brethren, had accepted kickbacks in the Women's Court. He further alleged a range of garden-variety, albeit troubling, missteps on her part as demonstrating "general unfitness" for continued service as a judge—including modifying two court transcripts and accepting a \$1,000 payment for serving as a spokesperson for Fleishman's Yeast.

But like Norris' appointment to the bench, her removal trial appeared to be doomed from the start. Without real due process protections in place, Seabury was able to manipulate the proceedings, blindsides Norris with a range of uncharged claims and obtain a favorable finding from the all-male Appellate Division on several modified counts. And while the court did not find that Norris had received bribes or was unlawfully harsh in her sentencing practices towards women, Seabury still won that fight in the court of public opinion. As the account offered by the Northrop brothers suggests, her prior wide-spread popularity and favorable reputation were obliterated by the investigation and narrative Seabury built around it. And no modern legal scholar has sought to contest these unfounded assertions about Norris, or the supposed integrity of the Seabury Commission.

Indeed, the appellate court found Norris guilty of misconduct without applying any discernible legal standard and summarily removed her from the bench without considering any possible lesser sanction. In the end, it would seem Seabury was successful in turning Norris's charm and competence on their heads, suggesting she deserved the most severe punishment because of her smarts and savvy. And, of course, all of this suggests that as a woman she was being held to a higher standard than her male peers.

In these ways, Jean Hortense Norris—perhaps similar to Billie Holiday and the other women who faced exaggerated allegations in the Women's Court—was deemed disgraced based upon little more than daring to demonstrate independence and behaving in a manner inconsistent with sex-based expectations in work-life and otherwise. As a liberated woman she



became a target, vulnerable to both attack and the imperfections of a legal system that lacked sufficiently developed due process protections.

Accordingly, both she and many of the Women's Court defendants might be better understood as women felled, not women who through their own shortcomings experienced a fall. Neither should they be entirely erased or discounted. This is not to say Norris deserves absolute absolution—the record presented here demonstrates she was far from perfect.<sup>420</sup> But this retelling recommends against reducing

420. And, as noted, there were other facts about Norris's life and career that were not the focus of the investigation. These details add to her layers and complexity. See Quinn, *Fallen Woman Further (Re)Framed*, *supra* note 10.

Norris—or any accused person, regardless of their gender, race, station in life, or place in history—to their alleged wrong-doings alone. It also begins the process of moving Norris out of legal history's margins so that she may be remembered as more than a mere mugshot in the American imagination.